Original

No. 34328-2-II
(#05-1-02436-6)

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

STATE OF WASHINGTON,

APPELLEE ,

V.

CORY LAMONT THOMAS

APPELLANT.

ON APPEAL FROM THE
SUPERIOR COURT OF THE STATE OF WASHINGTON,
PIERCE COUNTY

The Honorable James Orlando,
The Honorable Kathryn J. Nelson,
The Honorable Lisa Worswick, and
The Honorable sergio Armijo, Judges

APPELLANT'S SUPPLEMENTAL BRIEF AND STATEMENT OF ADDITIONAL AUTHORITIES RAP 10.10

CORY LAMONT THOMAS
APPELLANT

KATHRYN RUSSELL SELK, NO. 23879
COUNSEL FOR APPELANT
1037 NORTHEAST 65TH STREET, BOX 135
SEATTLE, WASHINGTON 98115
(206) 782-3353

DESCRIPTION ABBREVIATION(S)

VRP'S will be referred to as e.g. 3 RP 9

3= Volume Identitifed by Counsel is her Opening Brief
9= Page referenced

The following apply to the parties cited;

St:= State Prosecutor "John Sheeran" or "Marcus Miller"
Cn:= Counsel
Ap:= Appellant
Ct:= Court
JS:= John Sheeran (Specifically)
DB:= Detective Les Bunton
SL:= Sergeant Ryan Larson
GC:= Officer Gail Connely
LH:= Attorney Lembhard Howell

Exhibit packet is enclosed because of the way the Trial Court filed Motions and Objections by Appellant as "letter from Defendant" all which should be in the case files, and is only provided to assist if necessary

Should the Court desire to see the actual Motion or written Objection it is in the exhibit packet provided herewith.

This Matter comes before this Court on Appeal, at the request of the Appellant, seeking the relief Identified at the conclusion. The following is a Brief with errors occuring at Pre-Trial, Trial, and Post-Trial Proceedings in Said Superior Court. Appellant asserts that I have been subjected to a multiltude of Violations of my Federally and State protected Constitutional Rights. Appellant moves this court to conduct its review under the vested authority of this Court inrelation to the cumalative error doctrine. RAP 2.5(a)(3) for violations of:

United States constitutional Rights
Washington State Constitutional Rights
Washington state Statutes
Washington state Court Rules, and
Commonlaw Holdings.

The Content herein, which are supported the record also violate:

Substantive; Rights, Rules and Laws
Proceedural; Rights, Rules and Laws, and
Constructive; Rights, Rules and laws

All of the aforemention in violation of the relevant Constitutional Rights as well.

Appellant maintains, the grounds in this brief, and all the collaterally related errors are contrary to various Laws.

TRUTH IS MORE LIKELY TO EMERGE FROM THE INVESTIGATION AND PRESENTATION OF EVIDENCE AND OPINIONS BY TWO OPPOSING PARTY'S, THUS APPELLANT INVITES THE STATE TO RESPOND, SHOULD THE STATE NOT BE MADE TO RESPOND OR RATHER OPT'S NOT TO APPELLANT BELIEVES:

THE RECORD AND BRIEF: SPEAKS FOR ITSELF. "RES ISPA LOQUITUR"

Exact violations include but are not limited to;
WASHINGTON STATE CONSTITUTION ARTICLE I §3, §9, §10, §14, §22,§29, §30, §32,§2,
WASHINGTON STATE CONSTITUTION ARTICLE IV §28, §31,
UNITED STATES CONSTITUTION AMENDMENTS §5, §6, §8, §14
ARTICLE III §1, ARTICLE VI
WASHINGTON STATE COURT RULES= VARIOUS
RULES OF PROFESSIONAL CONDUCT = VARIOUS
ABA STANDARDS OF FOR CRIMINAL JUSTICE
ABA MODEL CODES OF JUDICIAL CONDUCT
RULES OF PROFESSIONAL CONDUCT
CODES OF JUDICIAL CONDUCT

GROUND 1
CONFLICT OF INTEREST NOT PROPERLY ADDRESSED

Appellant at various hearings, raised the issue of 11 conflicts of interest, in which two courts failed to make any inquiry, until several hearings later.

ST: "This matter comes before the court on the day of trial, Both parties are agreeing to a continuance in this matter. I believe Mr. Thomas is not agreeing to that continuance... Both the state and defense counsel are asking to continue this matter until Oct. 27. **1RP1**
Counsel for appellant also make a continuance record.

Ap: First of all I object to the continuance. If I have to, I'm prepared to go pro se and represent myself. Today is my trial. My last attorney asked me to do a 30-day continuance and said that today would be my last day to go to trial. And like I said I will represent myself. **1RP4**
Secondly, I'd ask that the court find a conflict of interest in my case with the Department of Assigned Counsel. They represent the victim in this case, they represent my co-defendant in this case, and they represent a victim in my other case. **1RP4**
Seperate from that I sued the City of Tacoma and prevailed. There's two attorney's who worked in the City of Tacoma Civil Division and are now employed by the Department of Assigned Counsel, And for those reasons I ask that the court find a conflict in my case **1RP4**

Cn: Your Honor, If I can address that matter, Mr. Thomas did bring this to my attention. Last Week in a telephone conversation... and I'm going to look into that **1RP4,5**
I'm not aware that we have any current employees of Department of Assigned Counsel that used to be employed by the City of Tacoma Attorney's Office, But in any event, I understand what he's saying regarding other conflicts with victims (and) co-defendants (and) witnesses and I will look into that if there is a true conflict, then we'll address that and I'll address it with my supervisor. So that's not the reason I'm asking for the continuance... But in any event at this juncture today, I'm his lawyer and I'm not prepared... **1RP5**

Appellant explains that I have spoken to his supervisor who recognizes conflict(s) that I have been conflicted out before, but the supervisor is not going to conflict me out again. **1RP5**

Appellant ask the court to find a conflict in the other case [34335-5] and that I will represent myself in [34328-2] the court conduct a pro se colloquy and allow pro se, the State moves again for 1 cure period.

Ap: I got a couple of motions. When I was dealing with that, I wasn't quite clear, but it was before the court that I made a motion for the court to make a ruling on the conflict of interest in this case, and I ask that the court make that ruling before signing the order to allow me to represent myself, because there is a conflcit in this case here, **1RP10**

Appellant then again raises specific conflicts, the State addressed one of them, counsel who was conflicted states:

Cn: At this point he's proceeding pro se so there's no longer a conflict on this case. **1RP10**

Ct: I am not removing the Department of Assigned counsel based on any alleged conflict I am granting Mr. Thomas's motion to allow him to represent himself. **1RP10**

Appellant then make a second motion for the court to dismiss due to state unpreparedness and that a order be drafted for the P.C. Jail to provide pro se materials, tools. **1RP11**

Ct: I would consider allowing it to the jail to give you access to the materials you need to defend yourself... 1RP12

The court denies the motion to dismiss, the ct further stated:

Ct: I granted the State a reasonable time period to subpeona their witnesses and have them here for the next trial date 1RP12

Cn: So the record is clear on my behalf, I informed the appellant that I would be requesting a continuance. 1RP12

Ap: I asked the counsel to let the State know I would proceed pro se if he was not prepared, and that I would be prepared to go to trial. And for that reason to have the State to have it's witnesses their. 1RP12

The State nor Conflict Counsel gives a rebuttal.

Ct: It's a matter for debate. 1RP13 (court adjourns)

Order never drafted, conflicts not inquired into, at all by the court before signing pro se order.

(Argument below next ground, as grounds both relate just different court departments)

GROUND 2
2ND INSTANCE OF CONFLICTS NOT PROPERLY ADDRESSED

Both [34328-2],[34335-5] before CD1, the last ground was before CDPJ. The State and Conflict Counsel represent to this different Judge.

> Noticed that the continuance order that we filed last week had some errors on it, one of which was the cause number was wrong, And it also had, under the expiration of speedy trial it said 10/11 when it should have been 11/11/05. 2RP3

Appellant first asserts mismanagment, on behalf of the State and conflicted counsel whom, prepared the orders, appellant asserts that this seamingly minor error become grave later in the issue of both appeals 'Proceedural Management'.

Appellant second asserts the State and "Substituted" Conflict Counsel, in err misrepresents facts to the court. Clearly on 09/27/05 CDPJ when asked by appellant to explain how speedy trial expires the court stated:

Ct: Thirty days after todays date. 1RP8

Thirty days from 09/27/05 is 10/27/05. Where the lawyers got 10/11 or 11/11 from is unknown to appellant but it clearly is not supported by the record, further how "Substituted" Conflict Counsel for "pro se representation", discussed this alleged error with the State when he was no longer a party to this cause number, is troubling in thought, as the State and "Substituted Conflict Counsel" obviously had subsequent conversations about constitutionally related matters involving myself.
At the very least, this "New" expiration date, that is in err, will forever effect later Speedy Trial or "Time For Trial" dates.
Conflicted Sub.. Counsel goes back again onto the record and begins making representations. 2RP4
Additionally, the State, in representation at a Bail increase hearing, represents.

St: The State under the 436-4, currently has bail around $33.000, The State would ask to increase that to a Hundred Thousand because of the newest charges. 2RP4

Appellant contends though it is seemingly monor, in relation to the amount being requested, for the State to comment "Around" $33.000 at a bail hearing is again mismanagement. What if bail "Around" $55.000?

Conflict Substituted Counsel in "Proposing" a new order to this court, again makes misrepresentations

Cn: The proposed order is identical to the one that we prepared last week, it just has the wrong cause number on it. 2RP4 and again misrepresents: The order that you have in front of you, Mr Miller has prepared, has identical language to it as the other court order, which is in the courts wrong file. 2RP4

Ct: Except for the correction on the Speedy Trial date. 2RP5

Thanks to the court for catching these misrepresentations at least in part. Appellant recognized it before I even got to that portion of these VRP's.
After the Misrepresentaions by two officers of the court Sub..Conflict Counsel has the gall to utter:

Cn: Thats correct, those are the two things that need to be corrected, so I would ask that--

That you sign that and make it effective NUNC PRO TUNC, and just take care of that "Housekeeping Matter". 2RP5

That was outrageous and unbelievable, not only the misrepresentations but now Substituted Conflict Counsel makes a NUNC PRO TUNC order request in a case that not only is he not a party to, but tried to manipulate the court into signing a (in effect) Nunc Pro Tunc, and Speedy extension order, before even uttering that it would have Nunc Pro Tunc effect, affecting other matters as well, by representing it was "Cause Number Only" under the guise of "Housekeeping Matter". The Court in Stating "correction" to the speedy trial date, is in the right mindframe, but is still yet, in another way having the wool pulled over her eyes; The "Correction" is an "extension". The State clearly said when the last court date was Sept. 27. 2RP5. yet the order "Proposed" still has a date further out than 30 days, of last hearing.
The Appellant refused to sign the erroneous order. 2RP4
After all of the misrepresentation are made and counsel is then exposed, all of a sudden, maybe 'ethically' Substituted Conflict Counsel states:

Cn: On that cause number, your honor, Mr. Thomas requested and was allowed by judge Orlando to proceed in this case pro se, so he's going to represent himself today in that bail hearing. 2RP5

Perfect timing for counsel to allow a Pro se litigant to proceed pro se.[to the reviewers of this appeal, appellant does not intend to raise seemingly trivial matters, but in the context of 'cumalative error' these collateral errors begin to affect the fairness of the proceedings too].

Substituted Conflict Counsel again on the record in this appeal, raises the issue of the conflicts because "they were on her docket", These are the same conflicts that appellant raised before CDPJ 1RP9, Those being the same conflicts that CDPJ refused to make inquiry into before signing the pro se order 1RP10.
Appellant by CDPJ's actions was not being afforded effective assistance, nor was being granted a speedy trial, thus appellant proceeded pro se, in an attempt to secure a speedy trial, and because "conflict" counsel is "ineffective assistance of counsel" or a State v Campbell continuance, by an attorney who is conflicted. And recognizes it,at subeseqent hearing. 2RP6
At this hearing in CD1 appellant ask's the court to appoint seperate counsel, since we are on her docket today, for the issue of conflicts. 2 RP5

Counsel who is representing a conflict and whom has been substituted knows there is a conflict in at least one way, and tells the court so, and furthers:

Cn: I'm going to strike that motion today and may have that revisited in the near future. I'm Looking into some of the issues that Mr. Thomas has brought to my attention. 2RP5,6

Counsel in addressing the issue with a couple of conflicts in regards to witness 2RP6, ends with:

Cn: I dont know if that rises to the level of conflict with you. I'm going to talk to my supervisor about that. And I've done a conflict check with all of the witnesses, there are some conflicts there. 2RP6 A couple of City Attorney's are in our office. 2RP6

Counsel here in CD1, recognizes more conflicts thatI long ago brought to his attention and last week brought to the CDPJ's attention, in fact counsel states while in CDPJ that he had been notifed "Last Week" about the conflicts. 1RP4
So by counsels own representations at the very least to this court, he has actively been operating under known conflicts since approximately 09/20/05, it is now 10/04/05. Nonetheless, counsel states: I'm not sure they rise to the level of necessity that we get another attorney outside of our office for Mr. Thomas, but I'm going to look into that at his request. 2RP6

Cn: So at this juncture, I'm not prepared to proceed on that, I'll just simply strike that Motion. 2RP6 So again all we have left is the bail hearing, and again, Mr. Thomas is pro se on that matter, so, with the courts permission, I'll ask that I be excused. 2RP6

Ct: You're excused. 2RP6

Cn: Thank you. 2RP6

No inquiry into anything whatsoever, by now two courts, and what about the Nunc Pro Tunc "Corrections", the Court signs them.

Appellant tells the court 'after their record' after reciept of discovery I dont think I can represent myself on this case [34328-2] and can I get an attorney seperate. [from DAC].2RP7

Ct: You were allowed to go pro se after rejecting the lawyer that the State had provided you. It now appears that there's some question as to whether or not that lawyer that's handling your other two cases can handle those cases, and if he cant handle those cases, either, at which time someone would be appointed for you for all three matters in one regular course. 2RP7. But currently we are not at that point yet. So I think you need to wait and see what happense with your other two cases before we solve the final issue of who should represent you at trial. 2RP7

The court make this statement like counsel did not just tell her that we are on her docket for those reasons [conflict] 2RP5,6
At this point appellant asserts that either the court erred in failing to ask any questions whatsoever regarding the conflicts, and if this court should find that counsel who was conflict -ed made a record regarding the issue(s), then appellant would assert that counsel was utterly ineffective for knowing of such error for several weeks now and it still not be resolved at this point. Counsel clearly acnowledges them 2RP6(these issue bearing on Speedy Trial) Further it was ineffective and in err for the court and counsel to not, set any future date to deal with the issues, no approximate date, no reserved ruling, nothing other than a continued I'm going to look into it. Counsel states how he will Just Simply strike the motion 2RP6, not being sarcastic, but in realest terms how I was feeling, why dont we just simply continue my speedy trials, simply keep setting this matter over, Like when CDPJ just simply decided to say. I'll take those up when those cases are before a Judge.1RP9 we are now before a judge in CD1.

Ct: So currently, your in a situation of being pro se, and the only matter were addressing is the amount of bail in this case. Do you feel comfortable continuing with just that limited matter right now? 2RP8 as if counsel did not state; The other issues there is also on your docket today, and at Mr. Thomas's request , is a motion to consider substitution of attorney's. 2RP5

Ap: Thats fine. 2RP8

Ct: Okay 2RP8

Ap: And-- 2RP8 (Appellant is cut short when trying to set a date to address conflicts)and proceeds on the issue of bail.

Appellant is in custody without the order the CDPJ's order for pro se materials, with errors from the first courts proceedings, wrong cause numbers issue, substituted conflict counsel is in essence representing a pro se litigant, Conflict counsel has obviously been in contact with the State regarding errors that are constitutionally related without appellants knowledge, he has in essence and in fact extended the trial by his misrepresentations, Proposing orders in a case he is not even a party to. after being discovered in his misrepresentations, then and only then does he change his limited proposed order theory to we are on the record at my request in regards to conflicts, conflict counsel has controlled the case to the point that we dont have a date to readress the cpnflicts, because he is going to look into them, later that hearing in addressing the conflicts he represents that I should have an attorney immediately [referring to another lawyer due to his conflicts] and yet turns around and says "He thinks" the best thing to do is reappoint himself. 2RP13 but at the very next hearing agains agrees that conflicts exist and he should be disqualified.
I submit when I said "Thats fine" I was not wholly in charge of my case. If for some reason this court accepts my "Thats fine",thetrial court nonetheless failed to conduct it own inquiry. and erred in reappointing conflict counsel in light of his acknowledged conflicts, should the court not be in err, counsel was ineffective for waiting this many weeks and ongoing as to a simple issue of does a conflcit exist? Instead the courts just simply took counsels assertions even when he was not a party thereto and set me over again, with the NUNC PRO TUNC order entered over my refusal to sign it. In regards to this "Housekeepin" matter appellant asserts it is clear I was not a resident..

CONFLICT OF INTEREST INQUIRY FAILURE ARGUMENT

Failure of court to inquire into conflcits of interest after defense counsels pre trial warnings of conflict, violated right to effective assistance of counsel because the court has the DUTY to avoid potential conflcits. Holloway v Arkansas 98 S. Ct. 1173. The court has the duty because "6th amendment holds, where a constitutional right to counsel exist, there exist the correlative right to representation that is free of conflicts of interest" Wood v Georgia 101 S. Ct. 1097. The court in these instance(S) neglected its duty to ask even one question from counsel at all, or set a date to address the issue based on his and appellants assertions and for no articuable reason, at all. whether or not a actual conflict exist when the court is made aware of such conflicts or "when the court knows of possible conflict, it has the duty to make inquiry" Cuyler v Sullivan 100 S. Ct 1708.

This court simply chose not address the issue's. "A trial court must make a factual inquiry if it knows or reasonably should know that defense counsel has a conflict of interest. State v Jensen 125 Wn App 319. Under Strickland which perhaps is one of the hardest test to overcome it was held; "Right to effective assistance of counsel impaired when defendants counsel operates under conflict, because counsel breaches the duty and loyalty, perhaps the most basic of counsel's duties, Strickland v Washington 104 S. Ct. 1097

It is a constitutional violation to do what both of these courts did "because the trial court knew of the conflcits and failed to conduct further inquirv" U.S v Greig 108 F3d 1272 1282. See also In Re Matter of Richardson 100 Wn 2d 699(holding it is reversible error if the court fails to make inquiry, no prejudice need be shown.) State v Hartfield 51 Wn App 408 (holding defendant alleging counsels conflict of interest need only show the court knew or reasonably should have know but failed to inquire as to whether conflict actually existed) U.S. v D'Amore 56 F3d 1702(holding absent compelling purpose it is a vioaltion of 6th amendment to deny motion for substitute counsel, and error is error that must be reversed regardless of whether prejudice results) Atley v Ault 191 F3d 865,875(holding harmless error standard does not apply to failure to make inquiry into conflicts) U.S. v Gallegos 108 F3d 1272, 1282 (holding right to effective assistance violated because court failed to obtain waiver to conflict free representation) U.S. v Prochilo 187 F3d 221,225 (where the record voices objection to appointed counsel...court should inquire into reasons for dissatisification.) U.S. v Anderson 189 F3d 1201, 1210; Stouffer v Reynolds 168 F3d 1155, 1161; U.S. V McCullah 76 F3d 1087, 1098-1099(holding prejudice presumed where trial court fails to adequately inquire...)

Where the court failed to do these mandatory holdings, REVERSAL is required, in light of all the errors subsequent hereto DISMISSAL is requested.

B

Appellant at the first hearing also requested that a order be drafted for pro se materials.

"The 6th amendment right to self representation inlcuded the right to access to law books, witnesses, and other tools necessary to prepare a defense... A incarceated defendant may not exercise his right to represent himself without access to law books, witnesses, and other tools to prepare a defense" Taylor v List 880 F2d 1040, 1047

Appellant asserts it was also REVERSIBLE error to not draft this order after knowing that appellant was in custody and specifically requested these tools.

C

Appellant asserts that the CD1 court erred when it not only told appellant that in essence I would have to proceed under the same limitations or accept a conflicted counsel. "A defendant cannot be forced to choose between incompetent [or Conflict] counsel and no counsel at all, it implicates the fundamental fairness and accuracy of the criminal proceedings and a showing of prejudice therefore not required" Crandell v Bunnell 144 F3d 6, 12-13.

Where appellant did not have the proper tools to be my own counsel, in essence appellant was made to choose between both ineffective pro se or counsel Counsel and no counsel at all. this placed appellant in a dilemma of a constitutional magnitued, regrettably, and reluctantly, choosing the lesser of two evils. appellant had to forego pro se representation. and proceed with conflict counsel as, conflict counsel was better than no counsel at all, self or otherwise. Third is conflict counsel or no Counsel at all

A criminal defendant may be asked to choose between waiver and another course of action as long as the choice presented is not constitutionally offensive. Illinois v Allen 90 S. Ct. 1057 Brady v U.S. 90 S. Ct. 1463 "The decision is therefore voluntary unless it places him in a dilemma of a constitutional magnitude." Maynard v Meachum 545 F2d 278.

Appellant submits that my decision in "Thats fine" was not wholly voluntary, I was entitled to proceed pro se with meaningful tools, and was not given those. I submit that I also had to forgo one right in order to secure another one.

An inmate cannot be forced to sacrifice one constitutionally protected right solely because another is respected. Allen v City of Honolulu 39 F3d 936 (9th Cir)

For the aforementioned reasons appellant move this court to DISMISS.

GROUND 3
UNREPRESENTED FOR THE PURPOSE OF HEARING

After all of the conflcit assertions, appellant is now back before CDPJ The State opens:

St: Mr. Quigley has determined --Ishould say Department of Assigned Counsel and Mr. Quigley Have determined that while a conflict may not exist. 3RP1
The relationship has broken down to the point where he needs to be disqualified and substitute counsel brought in. 3RP1
Mr Schoenberger has agreed to be the substitute counsel. He does not work for the Department of Assigned Counsel and has agreed to sign in. 3RP1
Because of that, because of Mr. Schoenberger's trial schedule, we will be asking that the court set continuance motions next week. 3RP1

Ct: Mr. Quigley

Cn: Your honor this is Mr. Thomas's motion today...I think the main gist of what Mr. Thomas wants from the court is to have the Department of Assigned Counsel disqualified from this case. We brought this to your attention last week. I indicated at that time that I dont believe that the conflicts that Mr. Thomas believes are conflicts, rise to the level of necessity that a new attorney be appointed...3RP2
I have talked to Mr. Kawamura of my office, who is my supervisor, who has indicated he does not believe its a conflict. 3RP2
The second conflict is what I would call routine conflicts in these matters. 3RP2
Mr. Kawamura agrees what should be done is to send letters out to other attorney's in the office, to not discuss the matters... So I dont believe that those conflicts are what give rise to the necessity that I be disqualified. It think what does is the content of Mr. Thomas's motion, which lays out numerous facts. Some of which I agree with, most of which I dont... 3RP3 (see Exhibit #)
I had Mr. Schoenberger sign a proposed order which I will hand foward at the appropriate time substituting him in as counsel for all three of the cases. If I am allowed to withdraw and be disqualified. Mr. Schoenberger is not present today. He's at McNeil Island conducting some interviews... 3RP4
Mr. Schoenberger has advised me he wouldn't be available to try this case for at least a month. 3RP4 and my understanding of the court rules is if I am disqualified today. Today is the new commencement date for all three of the files. 3RP4

The court ask's appellant if he would like to speak?

Ap: Yeah I do, First one, I guess I would object to any continuance of my speedy trial dates. I have raised these issues long time ago and they have been ongoing because the court allowed them to go on. None of the issues are pretty much new, They all have been back--dated issues and it should have been addressed a long time ago. In the event that they were, My trial dates might not have had to be continued... 3RP5

((at this point appellant will for the first time say "But for Counsels actions"...))

Ap: I did want another counsel, but after all the errors I brought to this courts attention I believe that constitutes a manifest injustice and I make a motion for DISMISSAL on these cases. I dont know if this court is going to rule on that or not But that was-- My initial motion was for DISMISSAL because of the manifest injustice due to all the errors. 3RP5 It is clear now that what I am raising is a factor and has been a factor, and is kind of late in my proceedings to say, okay, well, start over with a new lawyer, here we go again with a whole another speedy trial frame. 3RP6 And so I would just object to my trial dates being continued 3RP6 And, so I'm prepared for my defense, I guess I will ask again that the court give me an order for pens, and highlighters and my cases at the jail, and access so I can assist my [self] and my new counsel in my case 3RP6 [mistype]

Ct: I guess I'm not entirely sure what it is that you are objecting...3RP6

Ap: On My Burglary one and Assault two cause number [34335-5]If I have to, I am prepared to represent myself and go to trial next week, which is when my trial is set for. I dont necessarily want to represent myself, but I will, if I have to, if thats what it means to get to trial, or if thats what it means to take it to trial. Because I have been raising these issues, they should have been addressed long time ago. 3RP6,7 Its not my fault they weren't ready. I believe it it's partly my attorney's fault, partly this courts fault why they weren't addressed. But nonetheless, I am here now and have to continue my trial dates because of issues that I've raised since my arraignment, some month and a half ago. And I would object to all of my cases being continued, if the court does, thats discretionary, thats what the court does. 3RP7

St: Your Honor, maybe we could get a- it sounds like Mr. Cory is agreeing for the substitution disqualification and substitution, any continuance motion can be addressed next week 3RP7

(reviewers please do forget i'm unrepresented)

Ap: Okay if it is necessary to address the continuance motion next week, I guess what i'll say for the record is that I will go pro se. And I ask the State to have their witnesses available on my trial date, right now set for, which is next week. 3RP7

Ct: Well-- 3RP7

Ap: I want to go to trial on my cases and I shouldn't have to be subjected to sitting in jail on this excessive bail, because of errors I have been trying to bring to this courts attention, this should have been addressed a long time ago, and I wouldn't have to be here at this point today. I figured that thats what would happen, I would get all the way down to the end of my speedy trial and then the court would agree or my attorney would agree that these are valid and then say, well, we need a new attorney, he we go again. With speedy trial all over again. 3RP7

The court then impudently states: "You apparently suffer from selective hearing. the courts never ruled upon the validity of any of your motions. 3RP8 ((Really))

Ct: The delay in this case primarily was brought about by the first, your request to go represent yourself, which I granted, and then you shortly thereafter turned around and said you wanted to have an attorney. 3RP8

Ap: And the reason I will state again for the record that I said I wanted to have an attorney was because this court erred in not sending the proper materials upstairs for me to recieve what I needed to defend my case. I asked for pens, highlighters,law library access then and a few other things, I dont remember off the top of my head. 3RP8 And the court said it would send it up; the court didn't, therefore causing a due process violation.3RP9 So its not that I chose to have him put back on my case, as you're representing; I didn't want him there from the get-go. And had the Court done what it was supposed to have done, or told me it was going to do, then I would have never had to have had him substituted back in. I would still be pro se, and again I will add that my cases were continued again after the original date you said. And speedy trial had expired on a Nunc Pro tunc order. 3RP9 You continued them out two weeks, said I would have trial that day, and two weeks from there I didn't have trial, and they have been set out again. They continue to be... and I dont agree...This constitutes what I believe to be a manifest injustice, and I made a motion for DISMISSAL, or thats the motion I'm making.3RP10

Ct: I'll deny your motion...appoint Mr. Schoenberger as substitute counsel. 3RP10

Ap: And this Court-- 3RP10 ((I am again cut off)).

Ct: I dont find an equivocal request for Mr. Thomas to represent himself in all of his proceedings. 3RP10 I am not going to seperate these cases, have him represented in two and not in one case, which is actually the much more serious case.3RP10

Firstly, what part of I WILL GO PRO SE is not an equivocal Demand?, secondly I assert that the reason relied upon is untenable, I dont think he has the discretion to "Not seperate" cases that have seperate cause numbers and are unrelated to each other. in addition to the "equivocal" request what part of "And so I can prepare my defense I guess I will ask again for the court to give me an order for pens..." ect. ect. 3RP6 I guess what I'll say for the record is I will go pro se. 3RP7 It's not that I wanted him back I didn't want him there from the get-go.3RP9

Then in the most contradictory manner the court states:

Ct: I think its abundantly clear, he demonstrates some ability to file pleadings. But lacks, I think the ability to truly represent himself adequately. 3RP10

I think the only way I cant adequately represent myself is when I am not provided the tools that are recognized as being detrimental to a pro se defense or any defense. compare

Ct: I'll let him represent himself 1RP7, 3RP11

appellant then tries to address two seperate issues for the record, keep in mind I dont have any representative and we've already had this lengthy of a record. The State Says:

St: There's no reason to address any of them now. 3RP11

Ap: I will just add one thing. 3RP11

Ct: No, you are done. 3RP11

The court clearly stopped me from preserving my issues for appellat review [other issues].

These are more collateral issues surrounding the primary ground, and ask the court to now begin reviewing alot of these as clear error with clear error standard as well. [it is at this hearing that appellant files "notice to answer" which becomes a later ground and exhibit];this court room is our presiding department. Appellant asserts this was a critical stage, which I was not represented, at issue on this hearing date, thus far, is; issue of conflict counsel, reappointment of conflict counsel, due process, violation(s) of right to proceed pro se, pro se materials limitations, speedy trial and many I am probably not aware of.
Though the court gave no tenable reasons for its denial the State later comments "he was mad".

A

Appellant had to forgo his pro se, but at the very next hearing in which I had no representatior I demanded to go pro se, waive counsel, and have this court draft the order previously agreed it could have become less prejudicial but the court did what it did. "An accused is not imprisoned within his rights and may waive his previously invoked right to counsel." State v Marcum 24 Wn App 442,445 (citing U.S. v Womack 542 F3d 1047 (9th Cir))(citing as well North Carolina v Butler 99 S. Ct 1755.) Not only was it erroneous to deny pro se with no truly articuable reason. it was also error to imprison the appellant within my right to previously invoked right to counsel, that not only was I in essence forced into, I was unrepresented at this hearing.

B

The court not only erred in both imprisoning me within a right, and pro se denial, the court erred in yet another way; By making a appointment of this "New Counsel" who was to represent me over objection, When he wasn't even there (in the courthouse for that matter).This court left me unrepresented at a critical stage of my proceedings in which various rights, loss of rights were at question, as argued above.

"The courts gaurantee of assistance of counsel cannot me satisfied by mere formal appointment. U.S. v Cronic 104 S. Ct. 2039,2044 Aver v Alabama 60 S.Ct.321,322.
Also "Defendant was entitled to be represented by counsel at hearing on motion which he sought appointment of new counsel, because of alleged incompetency [or Conflicts] of his present Counsel." U.S. v Wadsworth 830 F2d 1500 (9th Cir)

"Few circumstances give rise for per se violation of 6th amendment, one is no counsel present at all or counsel not present at critical stage." Cole v U.S. 162 F3d 957,958 "We have found a constructive denial of counsel in cases involving the absence of counsel from the courtroom." Jackson v Johnson 150 F3d 520,525. "In extraordinary situations a petitioner may be relieved from makin•a specific showing of prejudice in support of his [ineffective] claim, that approch is limited to the rare cases where a petitioner has been denied counsel at critical stages." Young v Catoe 205 F3d 750,762-763. "A critical stage in the prosecution during which a defendant is entitled to be represented by counsel under the 6th amendment [is a trial like confrontation] in which substantial prejudice to a defendants rights inheres, and in which counsel may help to avoid that prejudice." U.S. v Leanti 322 F3d 1111(9th Cir).

Had counsel been present he could have surely, at least (helped) to avoid those adverse affect on the 5-6 rights at question. Appellant was again subjected to violations of right to effective assistance, right to proceed pro se, speedy trial, pro se limitations, ect ect. But the only counsel representing appellant was no counsel.
This Ground warrants DISMISSAL as well.

GROUND 4
PRO SE DENIALS, AND OTHER ERRORS

Oct 24 2005; Counsel Schoenberger actually appears, but the record fails to evidence where he filed any formal notice of appearance etc. The Court grants another State v Campbell continuance, at Counsels request, and sets trial for Nov 28 with an Omnibus Hearing set for Nov 9 the judge does state: I take notice Mr. Thomas has indicated a refusal, I also changed the language saying that this isn't by agreement, it is actually based on State v Campbell and required in the administration of justice. 3RP14

Nov 21 2005; Before appellant is even in the Courtroom the state comments:

Ct: Cory Thomas Your Honor 3RP15.

When I get in court the State conducts its formal opening, defense counsel moves for another continuance of trial to January 3rd 2006 with an Omnibus Hearing of 12/02/2005

Cn: I would state that Mr. thomas does not agree. he feels he has speedy trial issues. And I believe he has some other issues he would like to bring to the attention of the court.3RP16

The State notes this case is 187 days old 3RP16

Appellant tells the court I apologize, if the court felt the issues previously raised were disrespectful or rebellious in nature and that "Basically I am trying only to protect my rights here, though, and it appeared to me and in some instances it appears to me, that this court is not concerned with those, and more concerned with the conviction. rather than ensuring my rights. I object to this court date being set out past my speedy trial deadline of the 60 days. and that I object to this court [date] being set , as this is my 'Second' commencement restarting date for my trials. 3RP17 I request or make a request of this court that the court allow me my discovery under the public information act, and as [a] legally interested party to this case, I dont want there to be a State v Campbell issue as far as not being ready for trial, when I can be prepared myself, but the court has ruled it wont allow me to represent myself after it had allowed me to represent myself on these cases before. Two other issues I haven't been able to address these issues because I wasn't allowed to go into my last two hearings that I had scheduled. 3RP18 The record will reflect I was not present, I have the right to be present at all proceedings (argued infra) "I would ask at this time if I could file a notice of intent to seek discretionary review based on some of the rulings that you've made, so that my notice of intent to seek discretionary review is timely.3RP18
((at this hearing appellant filed a motion for extraordinary writ with division two, Exhibit))

Ct: Grant the requested continuance under State v Campbell to Jan 3rd trial date... Omnibus hearing date for Dec 8th. 3RP18 You are represented by counsel, any motion that you wish to bring, you need to run through your attorney. 3RP18

Ap: **Okay I choose to go pro se.** 3RP18 (no question as to equivocalness, clear demand)

Ct: We are not having that dicussion, it's already been ruled upon. I am not ruling on it again. 3RP19 (with absolutely no further record on the matter)

Ap: I am asking at this point if you can state for the record why you are not allowing me.3RP1'

(if any question as to equivocalness it could have been cleared here again but the court refused, This was another clear demand.)

Ap: I choose to go pro se. 3RP18

Ct: It's already been ruled upon. I am not going to revisit the issue. we have had this discussion on numerous occasions Mr. Thomas. 3RP19

We actually have not had this "discussion" I've been denied, the strongest possible reason if it existed would have been like he said "I dont find an unequivocal request" well that logic has again been shot down, this hearing and the hearing before last.

Ap; Well, theres a couple issues I ask that you make **administrative or judicial determinations** on, and the first one is--3RP19 ((cut off again))

Ct: Hold on a second, I have already ruled, I dont need to hear anything from you. 3RP19

Clearly appellant just told him there were a couple of issues for admin..determinations?

Ap: So is this court again allowing me not to speak, which is my right? I mean, its a canon that as a legally interested party I have the right to make a full record of speech. Obviously if my attorney's not raising the issues for me, I should be able to raise them with the court myself. 3RP 19.....

Ct: ----

Ap: well can I seek my notice of intent to appeal can I file that? Thats my right. I want to file a Notice of intent to seek discretionary review. 3RP20

Ct: You can file documents with the Court of Appeals that you deem appropriate.

Appellant then asked the court to provide a copy for me to fill out (RAP 5.2 J) The judge says its not a document they provide and told me to talk to my attorney, Appellant submits my attorney was doing absolutely nothing Ø. as the record reflects the RAP further states that if the document is requested in open court the Clerk Shall provide it, I later tell the court this and he still at that point does not provide it.
The Court erred in denying this form and my pro se demand, aside from not allowing me to create a record for appellate review and all other errors above,(It should be noted that after appellant provided the court and the State with a Copy of the Extraordinary writ motion sent to Division Two, did the State move on my behalf, not counsel nor the court but the State.)

NEXT HEARING **ARGUMENT TO PRO SE DENIAL(S)**

A

The Judiciary act of § 1789 1. Stat. 73, 92, 1789 Current version at 28 USCA §1654 provides: In all courts of the United States the parties may plead an manage their own cases personally or with the assistance of counsel if agreed "An accused is not imprisoned within his rights and may waive previously invoked right to counsel" North Carolina v Butler 99 S. Ct 1755

In Faretta v California the court in a precedent opinion held, "That in a State Criminal trial a defendenant has a Constitutional right to proceed pro se...Forcing a lawyer upon a unwilling defendant is contrary to his basic right to defend himself if he truly wants to do so. The right to defend is given to the accused because it is he who suffers consequences if his defense fails, the counsel provisions of the 6th amendment speaks to "Assistance" assistance **meaning an aid** to the defendant. to thrust counsel upon the accused violates the logic of the amendment. allocation of a lawyer can only be justified by the defendants consent the choice to defend must be honored out of 'the respect for the individual which is the life -hood of law'".Faretta v California 95 S. Ct. 2525

Defendants have a right to represent self and unjustified denial of this right requires reversal. State v Stenson 132 Wn 2d 668. Where a demand to proceed pro se is made before trial without continuance motion, the right exist as a matter of law. State v Hegge 53 Wn App 345 The denial of right to pro-se is not subject to harmless error analysis. McKaskle v Wiggins 104 S. Ct. 962. The denial of right to self representation is per se prejudicial error and requires automatic reversal of conviction...once a defendant has stated his request to represent self clearly and unequivocal fashion, and the judge has denied it in equally clear and unequivocal fashion, defendant is under no obligation to renew motion thereafter

and may accept judges ruling as final and may take all proper steps deemed necessary to obtain best possible defense under the circumstances. U.S. v Arlt 41 F3d 416(9th Cir) In this case on appeal the State cannot counter that it was unequivocal 3RP7 applies to the most recent request though others have been detailed above. I suggest two additional factors if not the record itself, which can be no clearer, however I would offer that the reason provided to the new second CDPJ judge at the very first 01/03/2006 hearing was to the exact effect of "he was mad at Mr. Thomas" Appellant has filed with this court an objetcion to that portion of the proceedings as not being provided. Counsel for appellant on appeal did request two volume for that day, and appellant believes it was purely mistake she was not aware that there was a norning session that preceeded the morning session provided by the transcriber. That portion would therefore be(Supp 3RP___) Yet another telling event was the fact that after appellant sought outside review by way of writ, the State motioned on behalf of appellant, their motion is titled "Motion to Proceed Pro Se" CP___ as this court is well aware of by now the Court had once previously went through the colloquy, therefore the State cannot rebut that the colloquy was insufficent.

The 6th amendment rights were violated by courts appointing counsel to represent her at trial despite her wishes to represent herself, The defendant was competent to waive her right to counsel and she unequivocally stated her wish to represent herself, following exstensive discussion and advisement occuring before trial. U.S. v Ottley 66 Fed Appx 119 (9th Cir). Where commencing several weeks before scheduled trial defendant unequivocally and repeatedly demanded his constitutional right to represent self and no motion for continuance was made nor was there any suggestion that request was to delay, disrupt, or obstruct trial, and where it was at no time waived, court erred by refusing to allow defendant to represent self and new trial was required. State v Watkins 25 Wn App 358 Like Watkins the appellant continued to re-raise the issue, and continued to object, and the in the most basic wording the court after the first alleged finding that it was not unequivocal refused to ever again make any subsequent record as to why subsequent denials were made, and yet opined that, we have dicussed this previously and he was not going to "revisit" the issue even in the face of the appellant asking the "Court" to make an record of why it was being subsequently denied. 3RP19 and to also in a seperate sentence and statement "make a Admininstrative or Judicial determin--ation" as to why appellant was being denied 3RP19. Appellant submits for any effective review the ethical and legal thing to have done would have been to simply make a record, appellant and the judge had more discussions surrounding the issue than one simple record could have cured or possibly cured, I again submit the State gave the most honest assessment in stating the judge was MAD.

Summation; The 6th amendment right to self representation violated when the court denied defendants timely request to proceed pro se made after knowing and intellegent Waiver. Moore v Calderon 108 F3d 261,264(9th Cir). The right to self representation is either respected or denied, its deprivation cannot be harmless. State v Vermillon 51 P3d 188 and as for the first order drafting issue, "It cannot be abridged" State v Hoff 31 Wn App 345.

B

In only certain situations can a pro se request be denied, here the court recognized those not to being a foctor discussed below.(In another ground as collateral record to that ground.)

Erroneous denial of motion to proceed pro se requires reversal without any showing of prejudice... a right to self representation can only be denied by a showing that the motion is made for (1) improper purposes i.e. the purpose of unjustifiably delaying the trial or hearing, or (2) that granting the request would obstruct the orderly administration of justice. State v Breedlove 79 Wn App 101, 138 Wn 2d 298

Clearly REVERSAL is not only warranted but mandated but because this error ultimately violated speedy trial. DISMISSAL is warranted, and requested.

NEXT HEARING

GROUND 5
DISCRETIONARY REVIEW FILING NOTICE DENIAL RAP 5.2 (j) (2004)
STATES UNTIMELY MOTION FOR APPELLANT TO PROCEED PRO SE

Only after the point of proceeding by way of extraordinary writ of proceedings to Div. 2 and filed the same in the trial court with a copy for the State, The State again in some conciliatory type act, motions on appellants behalf in formal motion apprximately 11 pages (Appellant does have with him at the time or typing) The State in its motion also took the liberty to specify approx, four dates that request/denials were made.
The State does make the misrepresentation that on 10/04/2005 that appellant requested an atty. "because he wanted one" 3RP21 Appellant clearly told the court the reasons that appellant requested an atty. 3RP8,9,10. Counsel goes on; On Oct 24 3RP21 "Defendant at that point requested again to go pro se...His request was denied."3RP22 "On the 21st the defendant then requested to proceed pro se. The court denied his request." 3Rp22 By this motion alone at the very least, the State recognizes at least two clear request, with clear denials. The State's brief goes on to note other dates as well.
Counsel for appellant, in one of another instances of implied ineffectiveness (in appellants eyes) states; Because he has handed me something for filing that he wants filed in captioned 'Supreme Court of Washington' ...I have no knowledge of whats going on until today, when Mr. Sheeran gave me copies of these letter and so...3RP24 Be it noted that counsel made his very first appearance on October 24, 2005. It's now a month later, notwithstanding the statement just made; Counsel states: "And he's filing documents and asking for discretionary review on things that happened before I was involved in the case. **So I'm confused whether I'm Stand By counsel, Primary Counsel, or not at all involved in this.** 3RP25
Clearly ineffective to not know your role after a month of being assigned.

Ap: ...Hopefully I will be fully heard today... 3RP25 First one I believe this Motion that the State is making is untimely, and its only after I sent this notice to the appellate court and the Supreme Court for discretionary review..And so I believe that this is-- I mean, The harm is pretty much already been done in this case... I appreciate the fact that the State is recognizing that it was my right...now they are bringing me back approximately 30 days before my'second commencement date' which is also past my speedy trial date. And is asking me if I want to go pro se. 3RP25, 26 I asked last week at my court appearance for a notice of intent to seek Discretionary Review...But under the rule of appellate proceedure I believe 2.3, or actually it is 5.2(j) The Clerk Shall provide that, if requested in open court. and I did request that and the court told me he wasn't going to give it to me. 3RP26 You told me simply file it when I got tothe appellate court level. And I object to not actually having that form. 3RP26 This motion here is only being brought after I have already sent that out to the appellate court. To seek Discretionary Review. And I think its untimely. And based on this error and the previous errors, I would renew my motion for DISMISSAL because I should have been able to go pro se then, and we wouldn't have been here today. And I asked you that, But you cut me off and you wouldn't let me speak, and that was my right to go pro se at that time And so I mean its pretty much useless at this point... And you know, what they raise in here is that you didn't ask me certain questions or things. but you did... As far as did I understand the law, have I represented myself before, do I understand the seriousness of the charges, and you did allow me to go pro se but it was only after I filed motions for DISMISSAL based on due process that you told me I couldn't go pro se anymore, And here they come with this motion...3RP27
So basically I think its untimely and my suggestion is that the case be dismissed because of that. And like I said, if not I have already requested Discretionary Review, and extraordinary writ on the appellate court level because of the errors in this case. 3RP28 I mean like last week, I clearly asked just for a form to seek Discretionary Review, and you told me no. The rule clearly states she's supposed to supply that to me, if, I request that in open court. And I dont even understand why that even happened that way. 3RP28 Like I said simply, I got an attorney, I am going to proceed with my attorney, but kind of late for this. 3RP29 You have already continuned my first trial commencement you have already continued my second trial commencement past speedy trial dates, if you did try to correct it at this point, it should have been applied at my first trial commencement, when I asked for it to be--to go pro se and it didn't happen because you didn't want to, But it was the law. 3RP29

Ct: ...A different Judge at at different time, for different reasons, reappointed counsel Mr. Thomas then renewed his request. **I think for the second or third time...**

St: If he wants an attorney. 3RP30

Ct: Thats the issue **I am not going to revisit this once again**. I think the record is clear It doesn't undo any of the errors, Mr Thomas believes occurred previously; Those are all preserved for the record, and will certainly have the ability to litigate those issues in a different forum. 3RP30

((And here appellant sits to sort out all of this mess for appellate review))

Ct: I dont think he's risen to the level of somebody who is abusing the system by frivolous filings. 3RP31

The court then on his own volition states into the record;

Ct: He's raised some legitimate inquiries in the past. And I know he has a lot of time on his hands in custody and he obviously is a very articulate young man. 3RP31

Needless to say, of the inquirie(s) the file lacks one single order, ruling, etc. or response from the State for that matter.

Appellant then Moves the court 1 more time to DISMISS 3RP31,32

Ct: I don't see a basis to dismiss the case at this time. 3RP32

Ap: Thank you and God bless you. (while being led off back to the jail)

Ct: Thank You, Mr. Thomas

(Hrg's with this CDPJ judge ends with the end of year)

GROUND 6

NEW PRESIDING JUDGE WITH THE CHANGE OF YEAR

COMPULSORY PROCESS VIOLATION

SPEEDY TRIAL VIOALTIONS

DENIAL OF "AID"

A whole new presinding Judge with a Change of the year, very happily, all parties except appellant, more than like had a great time at end of the year holiday festivities.

Appellant at the first hearing (Morning that a Supplemental request has been sought for) raises all of the isses with the new judge and Makes a motion for DISMISSAL, on the record is appellant, Counsel, Marcus Miller, [John Sheeran did not show for this initial setting]

Because appellant does not have the entire VRP's I have to paraphrase this first part; The new presiding judge made an excellent record, in that the file is near deplorable standards theres no State responses to any of appellants motions, No written rulings, The state responded "Orlando was mad at defendant [in re pro se denials]" and that "Orlando was not requiring the State to respond to the Motions made by appellant." Appellant would have to say that though Marcus Miller committed other prejudicial errors on behalf of the State, He was the only attorney that Motioned on appellants behalf for pro se, he did make an attempt to make records, he did attempt to make or nave somewhat of a good repor with appellant, he did try exstensively to resolve his case and appellant was attempting to as well, however resolution could not be met because John Sheeran demanded appellant plea to his cases 4 in a seperate cause number that appellant was subsequently aquitted of in a differnt court than the trial judge relevant hereto. Appellant has to admit that Marcus Miller was pretty Candid with this new courts inquiries, and was ethical and candid pretty much throughout, [does is no way diminish the errors committed by him thcugh] John Sheeran on the other Behalf totally vindictive, in fact he is the party relevant to a vindictive prosecution claim in [34335-5] for penalizing appellant for not waiving appeal rights Post-Trial. and several other outrageous acts in the other appeal. He was utterly reckless as the records do reflect.

To the record: Appellants case looked as though this court was about to dismiss the case and M.Miller and the Judge (I dont remember exactly how without the record) but it was determined JS needed to be called, as he had worked appeals for the county in the past and was chosen to represent myself in the other criminal matter.) M.Miller told him he needed to "Get Down Here" in a call from the J.A's phone in the court so the court took a recess for him to get down here. the following occurs; and the tarvesty of justice continues when he's Back:

In Comes J. Sheeran, Finger pointed at the judge as if to say you better not (and being transparent you all are judge's in you extra judicial activities it's verifyable) He is pointing his finger as if you better not, or as if he is somehow personal with her(and or) she owes him one.

JS: It's my undertanding the defendant walked in this morning and asked to go pro se, defendant has been playing this(game) with the court every since his was arrested. 4RP3

Ct: I have a courtroom available for him. 4RP3

JS: This is not the issue. 4RP3

Ct: Could Be 4RP3

Ap: Yes 4RP3

Be it noted, two things; (1) the states first comment "Def. walked in this morning"4RP3 that statement support appellants contention that there was a significant record earlier. (2) The court stated she has a courtroom available. And at earlier record when it was made clear that there was a courtroom available and that appellant could go to trial now if he wanted to [On/Ct] appellant again for the last time asserted his right to proceed because counsel for appellant was still not yet prepared and it would have at least meant that appellant could have finally got the ball roling by being assigned out.
But the court is playing a game There is no courtroom available, as later determined when I kept asking to be sent there.
It is of particular note that the State comments that my counsel had been assigned out already on another case. 4RP3,4 So even if there was as the court first purported My counsel had already, previously been assigned out before I came on the record, so he wasn't taking me to trial today anyway.(this is just reading between the lines) To be honest I dont know if my counsel was infact assigned out? remember it was this counsel many hearings ago was the same individual who stated he was not seeking a lengthy set out because I was in disagreement??

JS: you're being played with <u>because Orlando made decisions</u> 4RP4 (is he serious, decisions?)

Ct: I haven't seen the--4RP4

As if being totally unreasonable and utterly outrageous again

JS: I invite your honor to call Judge Orlando.4RP4 [who is assigned at Remann Hall now]

Ct: I'm not going to call Judge Orlando, **What I would do would be to review the transcripts of the hearings**.4RP4

In an honest assesment of the file the court States;

Ct: There are not orders in the files reflecting what everybody is trying to tell me what has happened one way or another. It's all been on the record. 4RP4

To support my contentiton that the court[Orlando] erred in not allowing me to proceed pro se I reiterated to this new CDPJ judge what M.Miller had said in explaining why he felt Orlando erred, it probably didn't need to be reiterated but I did because the State made the comment.:

Ap: I should have been able to go pro se. But like he [miller] said. Orlando was a little bit upset or irritated, which is not my problem. 4RP6

Clearly untenable reasoning for pro se denial and of all the parties, the State made this assesment and conclusion as to it's belief why the denial took place.

Ct: The State is not ready to go based on whats happened previously. 4RP4

As if I am the one to be disadvantaged because of the States mismanagment and failure to act sooner. As described herein I asserted my speedy trial and conflict since the first hearing following arraignment, and continued to until it was too late

With those issues long over, I continue with the record before us all.

To the issue of this courts failure to provide a compulsory process; The court:

Ct: It would be your obligation, if you proceed without an attorney, tp present your defense Subpeona witnesses, and represent yourself in a competent manner. 4RP4

The court then goes through extstensive pro se colloquy (15 VRP pages) and still continues the matter out from Jan 03 2006 to Jan 19 1006 and comments further;

Ct: We'll se if we can get him out. 4RP25

Ap: I motion for my case to be set out within a week. 4RP26

Ct: Denied 4RP26

Another officer of the court whispered in my ear to have it set within the 14 days that the cure period she is setting it pursuant to calls for(I knew 14 days but had forgot)

Ap: I object to it being a lengthy set out 4RP26

Ct: Denied. Your objection is noted, Jan 19. 4RP26

When I tried to request assistance for a compulsory process, the court would not allow me to make a record or the request and stated:

Ct: We're not here for you to make additional request...you dont get to sua sponte make motions...If you wish to make motions, you need to not e them up. 4RP27

Ap: I dont have the means to note them up. I would ask for stand-by counsel To help with these things. 4RP27,28 (Clearly denied a compulsory process)

Ct: Denied. We went through this for almost half an hour, Mr. Thomas. 4RP28

The record will clearly reflect that we never addressed; "I dont have the means to note them up ..can I have Stand By to; Help with those things.

and then makes the totally unfounded assumptions or better yet assertion:

Ct: At this point I find you're only trying to manipulate the system.

Two moments later while I am trying to make a rebuttal Statement

(Proceedings Concluded)

So I took the liberty of mailing these concerns to the Judge at the Courthouse, and also mailed the same to the clerk in Motion Format. Exhibit___CP____

The Items mailed were all seperate;

1) Objection to Compulsory Process Violation
2) Objection to denial of Stand by(for Compulsory Process as detailed therein)
3) Notice of intent to seek Discretionary Review.

(In the motions / objections I did make abundantly clear NO HYBRID)

this court clearly erred in Not providing a compulsory process for an incarcerated defendant and that denial over request / objection. This court also erred in continuing appellants case for lack of courtroom space as reflected in various continuance orders. This court also erred in setting another "Cure Period" buy going outside the 14 days, over objection.

The argument in support of error asserted will be argued after the next ground as they as all interwine,, and have related facts

GROUND 7
ANOTHER: DISMISSAL DENIAL, COMPULSORY PROCESS DENIAL AS WELL AS DENIAL OF "AID" AS CALLED FOR BY SIXTH AMENDMENT

Jan 19 2006 Trial Date.

Be it remembered that all parties also agreed that today the court would rule on the DISMISSAL Motion that the Court never ruled on, last hearing so that It could review the Transcripts

Yet not to forget trial is set for today and I've been afforded no Compulsory Process. nonetheless the court implied she would review the transcripts. 4RP4,

The State at this hearing labels the aforemention three pleadings all as:

St: Which I would have interpreted as him requesting, re-requesting, I should say stand-by counsel on these cases. 5RP4 (Fails to mention Comp. Proc. filed at same time)

Ct: Mm-hm. 5RP4

Then in another downplaying act, the state also threw the smoke screen up of The Offender Score Motion up as being important .

Appellant then corrects the record and raises the true isse of DISMISSAL as well, that was not ruled upon previously, but reserved 5RP4 in which the court said she would need to review transcripts [back at 4RP4] as well as issue of sending me out to trial. 5RP4
Counsel for the state says something that becomes the next ground. and is in fact the reason he is asking to have (one) of those motions set over to "This afternoon" 5RP5 In spite of the fact that we are now on the "Motion" docket with a time set for us, and our issue(s).

Counsel then states: "And if there is a court room available, assign us out to a courtroom.5RP5

(Please keep in mind there wasn't one on the 3rd of Jan either.)

After all of the conversation about reviewing the transcripts and about setting this motion as A Motion to rule on dismissal way back at[4RP4,23,26] At which point the court herself said:
Ct: Well we need to note up a date. 4RP23. (She now on this date 1/19/06 states;)

Ct: I dont have it docketed for this morning. The only thing that I have from you is a "Letter" from you requesting Stand by. 5RP6 (nothing about Comp. Proc. filed together)

Who is playing is the question I wished to ask J. Sheeran at the time but I did not. Though its clear at [4RP4 and again reiterated at 4RP23,26] but Now its not docketed??!! Not only is this a Joke it also clearly supports the assertion that I had no Compulsory Process to prcperly note matters or any compulsory process for that matter. In spite of the fact that this is was verbally acknowledged.

As to my compulsory process the court in insinuating I was somehow lying, States Now I am "rewriting history" By her apparent inability to discern what the contents of my objection and motion related to she so gracefully read it right into the record for me:

Ct: I want to express to you that it is my desire to conduct my own defense, but I did not intend to waive counsel with helping me do the things that I cannot from the jail.5RP7

The Court acted like her apparent inability to know what that meant, after reading it under--stood clearly. If not for the fact that they were in fact labeled, easch, (noted above)

The Court further elaborates that she has no "Motion" only a"letter" [this is why the appellant did not know how to distinguish what was in fact was filed on what date, because whether Motion/Objection/Notice to Answer whatever it was, it was simply filed as "Letter from defendant, and for that purpose has enclosed in this briefing all the copies, hereby identified as Exhibits]

So the appellant begins explaining that I have copies that are datestamped by the court so she should have them too, when I go to get them she comments: "OKAY" and moves on to the issue of Notice of Intent to seek discreticnary review. 5RP8

Why it has become so difficult to address, or so easy to avoid the issues of (DISMISSAL) and (COMPULSORY PROCESS) is beyond me. but talk about everything else.

The court then again leaves the subjects alone and asks me am I ready to go to trial if A courtroom is available? I say Yes! But still no ruling on Comp. Proc or DISMISSAL.

Ct: We dont have one this mornig, but we might have one this afternoon 5RP8

So I raise the issues again of Dismissal and I am told at this point:

Ct: I dont have a motion docketed, is the problem I have. 5RP9

Anyway around it huh? And Some More. shes back on Orlando:

Ct: So what you're telling is you have a motion to Dismiss pending too? 5RP9

Ap: [I tell her there are plenty (he) did not rule on. And also the State has never responded to any motion (either)] 5RP9,10

I think the court realizes I am not going to let up on her reserved ruling that she says she would address, and have to look at the transcripts.

She Takes her glasses off, rubs her temple and we need a recess.....

(Recess Taken)

After recess

Ct: I've reviewed all the briefs on the Cory Thomas matter. 5RP10

St: Do you want me to call the case your honor

Ct: Yes. 5RP10 (State calls the case)

[Sidenote Misrepresentation forgotten; While discussing the issue of Offender Score I ask the Court to look up a case, she tells me "I dont Have the case" 5RP20 yet she has a whole wall of Washington 2d cases as well as Washington App.--The State grabs the book and gives it to her]

The Court then addresses my motion to dismiss at 5RP21 aside from the issues already for her consideration of dismissal, I ask her to also include the error she made of continuing my "Cure Period" past 14 days over objection. 5RP27

In preparing to deny my DISMISSAL motion the Judge States;

Ct: It is your motion to dismiss and it would be your obligation to provide me the facts upon which I need to base an opinion. I do not have those before me.5RP35
I'm Going to deny your motion to dismiss. I believe we have a courtroom available. 5RP35

----------So that this issue is clear and not misunderstood----------

Appellant had Judge Felnagle as my arraignment Judge whom I knew gave me an excessive bail contrary to the facts that before these convictions on appeal, I had no adult felonies. Based on Judge Felnagle's excessive bail coupled with the fact that It was quite clear I would be leaving jail no time soon, adding to the fact that I had given testimony on two different occasions in a jury trial before Felnagle[Unrelated to myself, if the cases names are desired I will provide them] in which time(s) he threatened to have me held in contempt, for a action totally beyond my control elicited by the officer of the court, on top of the fact that I knew Many judges not to like me based on the history of Cory Lamont Thomas v City of Tacoma 410 F3d 644(2005)(9th Cir.)[I felt this case had alot to do with the manner of my prosecution and in fact is the very first ground in re unlawful arrest in34335-5] I knew this would be an uphill battle, in which I am still climbing.
I thought it very wise to Make a change of venue / Change of Judge motion in both cases that are on appeal.(Later denied by trial judge) Identified my LINX and the CP's in this appeal, on the actual record of 34335-5 in which I have not yet recieved. I say all of that so it is clear to the reviewers that this had benn considered and addresses, in part months ago.
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After the court says she believes there is a courtroom. I say

Ap: I have a question. Can I ask who my trial judge? Who my case has been assigned to as far as my trial Judge? If it is Felnagle, I would like to file an affidavit of prejudice! If not I ask to be sent out to trial. 5RP37

Ct: It is Judge Felnagle, If You want to file affidavits of prejudice. You can certainly do that now. 5RP37

It is already past 4;00PM and the State moves to continue to Monday Morning 5RP39

It is in fact very ironic that he J. Sheeran wished to continue me to Monday Morning at that time, and it is also ironic that this supposed judge is the one available, it is more ironic that this contintuance motion by J. Sheeran is made only after 4:00 'the close of Ct.' J. Sheeran know a couple more things I dont know; Follow this colloquy:

Ct: Judge Felnagle is going to be in CDPJ in the morning [on Monday] we should probably continue it , As to the affidavits, he's signed affidavits against Judge Felnagle who will be presiding. Just bring him back in the afternoon. 5RP39

Appellant takes notice that the State still placed him on the 08:30AM Docket before[Felnagle] and points it out to the State, as the Judge is watching, she looks at her other order and states:

Ct: Again, These say 8:30, they can't say 8:30 on Monday.5RP40

Of the most ludicrous thing the State says:

St: Should I put that as 1:30 5RP40

I Submit Outrageous conduct (Recess Taken)

ARGUMENT IN SUPPORT OF THE ERRORS IN THESE TWO GROUNDS COURT DATES

SPEEDY TRIAL

Appellant understands that washington almost does not have a Speedy trial rule but as of current we still do, it's just a harder prong to meet appellant asserts that that hurdle is easily overcome. Speedy trial in this case was violated in several different ways in violation of other constitutional rights. Appellant asserts I was placed in a HOBSON and or MICHIELLI choice, No one in this case may claim that any exstentions were for appellants benefit , as I asserted the right to speedy trial more times in this case than either counsel, who were both later conflicted, did for the entirety of the case and proceedings,I Must add that they raised it ZERO times. and in one instance as described at the outset the Court refused to calculate the timeframes on the record at appellantrequest, appellants submits that while serveral other constitutional violations caused the continuances, In law there is the term "But For" and I would contend that But for the errors of Counsel(s) and the Court, as well as the Prosecution, the outcome of all of these proceeding would have been much different had they acted within the substantive and proceedural rules and laws in place.

Dismissal With Prejudice is warranted where a Speedy trial Violation has occured. Barker v Wingo 92 S.Ct. 2182 in fact the new presiding Judge appeared to be about to dismiss the actions but did not because the record was not before her, this record now sits before us.

As for prejudice, it is at every single stage, minus the one's I was kept out of the courtroom,that multiple prejudices exist as detailed in each case cited, for ever case cited those are many of the prejudices, and have been shown by the record. Appellant neen not show specific prejudices anyhow as,Speedy trial act does not require a showing of prejudice to a defendant if the time limits provided by statute are violated. U.S. v Adu 770 F3d 1511. The inability of the accused to pinpoint how exactly he was prejudiced is not fatal to his claim of Speedy trial violation , where it is clear that the court and government were responsible for the extraordinary delay, and it is clear the delay was caused by negligence rather than bad faith, prejudice can be presumed. The strength of that presumption grows as the length of that delay extends. State v Graham 128 f3d 372,376

As to the timeframe for speedy trial "When a court is put on notice that defendant wishes to assert the right to self representation, but nevertheless delays ruling on motion, timeliness of request must be measured from the date or inititial request. In Re Breedlove 79 Wa App 101. Where appellant did raise the issues with speedy trial issues with my counsel I assert he was ineffective for his statement and failure to make inquiry, after he was not the original counsel and did not know of exact dates that had been continued, counsel stated: "He feels he has speedy trial issues."3RP16 "If defense counsel learns of speedy trial violation at any point before speedy trial expires. She [he] has a duty to raise issue before period expires. State v Malone 72 Wn App 429 [emphasis addded] The record will reflect that neither attorney EVER raised even a issue of calculation, much less an objection.

At this point of the proceedings we have, speedy trial violations, violation of right to conflict free representation, pro se denials, hobson choice, unrepresented and many other collaterally attached errors, appellant asserts that the proceedings have long ago fallen into proceedural default, by themseleves(proceedures). The sentence obtained in this case has been obtained in violation of several State amd Federal Constitutional rights, "A sentence obtained through violation of a constitutional rights is a nullity." Horn v Bailey 309 F2d 167.

Appellant is aware that courts generally do not grant speedy trial violations that have seemingly short delays or continuances, that is not the case here, the State and Court through their inaction has appellant over 5 months of continuances, for untenable reason, many of which are not supported by the record, Our 9th Cirquit has previously held: Further incarceration of One Month qualifies as actual prejudice sufficient to justify a dismissal due to unecessary delay in bring defendant to trial. Yuan Qing Jiang 214 F3d 1099.

In this case the only record made was a continual State v Campbell, over objection, the appellant objected to State v Campbell contiunaces in the trial court because, appellant was ready to go to trial at all times, the last CDPJ asked the appellant if I was ready to proceed to trial, right now should there be a courtroom available, appellant answer with an affirmative yes. At 5RP8 this appellate court should hold State v Campbell inapplicable.

Had the court provided the proper tools, or allowed pro se after, second, third... demand, there would exist no Campbell issues. The court failed to give any other reason, and in fact continued to say I am not going to revist that. I contend that the court failed to make a tenable record in support of any continuance, in contrast to appellants records, Where a Court makes no findings on the record in support of a §3161[Speedy trial] continuance, Speedy Trial harmless error review is not appropriate. Zender v U.S. 126 S. Ct (2006). As far as an additional argument as to prejudice, though prejudice is not vital to a speedy trial violation, As for prejudice, it must be noted as one of the oddities of law that while the loss of speedy trial constitutes prejudice, when caused by vioaltion of another Constitutional right such as in the case of a late amended information...State v Michielli 132 Wn 2d 229 . Appellant asserts,as already asserted, other constitutional rights have been violated as well causing the same situation as Michielli(supra) Prejudice includes a threat to an accused's significant stakes--Psychological, Physical, and Financial--in the prompt termination of a proceeding in which may ultimately deprive him of life liberty or property. U.S. v Dreyer 533 F2d 112,115.

The right to a speedy Trial is as fundamental as any of the rights secured by the 6th amendment. Klopfer v North Carolina 89 S. Ct. 988.

I would be naive to not address it in the sense of an abuse of discretion standard as well, in this case not only was there an abuse of discretion(s), one court even refused to provide the form pursuant to the 2005 RAP5.2(j). nonetheless, Continuance will not be disturbed absent a showing of a manifest abuse of discretion. State v Williams 104 Wn App 516 520, 521 An abuse of discretion occurs when the trial court relies on untenable grounds or reasons. State v Feems 89 Wn App 385,388. Appellant has already discussed untenable reasons.

As A though in closing this ground. Appellant understands the reasoning held in State v Campbell, and counters; (1) appellants case does not compare to Campbell circumstaces. And (2) Defense counsel may waive a defendants right to speedy trial in the absence of a clear objection from him or herself...Defense Counsel does not have aCarte Blanche to waive speedy trial rules on behalf of a client. State v Franulovich 18 Wn App 290,State v Cunningham 569 P2d 1211, Especially when a defendant is objecting to such reasoning by way of pro se.

This Ground regarding Speed Trial warrants DISMISSAL and is requested.

DENIAL OF A COMPULSORY PROCESS OVER OBJECTION
(AND) DENIAL OF "AID" OVER OBJECTION "NOT HYBRID"

Compulsory process **ARGUMENT**

This ground is intertwined thus appellant hopes to not lose the reviewers. The right to counsel and the right to a compulsory process are both ingredients to a fair trial. State v Burri 87 Wn 2d 175.

Thus is is indisputable that the right to counsel and the right to a compulsory process are seperates rights; likewise, the right to proceed pro se and the right to a compulsory process are seperate rights. In many instaces they both Correlate.

Appellant has given you the facts of myself being pro se and incarcerated, And the record does reflect that the appellant asked the 1st CDPJ judge for an order beacuse of that limitation, Which ultimately was not completed.

Appellant also requested that the 2nd CDPJ judge to in fact appoint "Stand By" for the purpose of "Aid" as related, I dont have the means to note them up. 4RP27,28 and I would ask for Stand By to help with these things. 4RP27,28 and at asubsequent hearing; I did not intend to waive counsel to help me w/ the things I cannot do from the Jail. 5RP7

Appellant not only sent a personal letter to this judge, but also mailed copies of two seperate motions to the court (that were filed and before this judge this date) in fact the last RP was read into the record by the judge. Nonetheless, that compulsory process was not provided, over objection. Appellant understands that it has been generally held that when a defendant proceeds pro se he loses many of the benefits associated therwith,

However appellant assert and contends that he loses no constitutional rights, as argued below, to be forced to surrender one, and one, right, to assert another places a defendant, and did place the appellant in a HOBSONS Choice. And that Unconstitutional.

Appellant asserts he should not have lost the rights to (i) A Compulsory Process, and (ii) The right to "Aid", for the purpose of a compulsory process, appellant made it overly clear to the court in the motions (written) and the record that I did not want "Hybrid".

The Right to self representation(and)the rights to assistance of Counsel are seperate rights depicted on opposite sides of the same 6th amendment coin. U.S. v Purnett 910 F2d 120,128 A defendant in a criminal proceeding is entitled to certain rights and protections, which derive from a variety of sources, he is entitled to all of them , he cannot be forced to barter one for another, when the exercise of one right is made contingent upon forebearance of the other both rights are corrupted. Miller v Smith 99 F3d 120,128 Forcing a defendant to surrender one constitutional right to assert another is intolerable. Miller(supra). A criminal defendant may be asked in the interest of orderly proceedings to choose between waiver and another course of action, so long as the choice presented to him is not constitutionally offensive. Illinois v Allen 90 Sct. 1057, Brady v U.S. 90 S. Ct 1443. The decision is therefore voluntary unless it places him in a dillemma of a constitutional magnitude. Maynard v Meachum 545 F2d 278. See Also Allen v City of Honolulu(holding An inmate cannot be forced to sacrifice one constitutionally protected right solely because another is respected. 39 F3d 936 (9th Cir.)).

Appellant asserts this situation in this ground as well as the situation before CD1 both placed the appellant into an HOBSONs CHOICE or MICHIELLI CHOICE. Appellant in no way waived such right to counsel, should this court feel as though I did in the 15 pages of colloquy Appellant brought the issue up at the very next hearing, at the very least it is clear that the appellant did not waive, and in fact, objected, to not having been provided a compulsory process Appellant told the court I did want to represent myself at trial, but wanted "AID" to help with the things I could not do from the jail, it was clear by the subsequent hearing that the court stated an issue was not "Docketed" after exstensive record in the previous hearing. And the same concern arises with subpeona's and scheduling witnesses for interview prior to trial, appellant could not even get DAC to serve subpeona's because they were not authorized to nor were they signed by the court, and appellant had no way of having the court sign them, sicne I couldn't just tell the jail, I'll be right back, I need to have the court sign this. one step further, I need to go and schedule a date so they can sign in. There are many different ways this can be argued, in the plainest sense it is known, that a incarcerated offender cannot provided himself a compulsory process by himself.

Then what right must one surrender, the compulsory process, or the pro se. Appellant asserts this court, I want to say abused it's discretion in not making an appointment for that limited purpose, but will opt and say that the court erred in failing to either make an appointment of "AID" or provide a compulsory process. It is well know that a court over objection of the accused may appoint standby. Why not when it is a necessity, to insure another right? It is of importance that appellant told the court that I wished to have the Assistance that Faretta calls for, Faretta which is precedent held that 'assistance' meaning an 'aid'. Faretta v California 95 S. Ct. 2525.

I submit the errors aforementioned are of a constitutional magnitude. And DISMISSAL is warranted due to cumalative errors, still cumalating.

And to second and reaffirm the erroneosness of the error asserted. J. Sheeran came to the jail, told appellant that he had never in his career been into the jail, and was there to provide appellant a letter, on pierce county letterhead, prepared and signed by him, that stated "The fact that you are pro se does not alter any of the previous prvisions of the No Contact Orders." [if for any reason this is misqouted it is because appellant doe not have it with me at the time of typing, but it is here included in the exhibits. Ex.____].

Government interfereance with defendants right to present a defense including calling witnesses, violates the constitution. U.S.v Deering 179 F3d 592. Criminal defendants have the right to government assistance in compelling the attendance of favorable witness at trial, (Compulsory)Pennsylvania v Ritchie 107 S. Ct 989. Because the right to offer the testimony of witnesses and compel their attendance, if necessary, is in plain terms the right to present a Defense. Washington v Texas 388 U.S. 14,19

This prosecutors affidavit alone shows a substantial interferance with a constitutional right to establish contact with all parties of the case, where the court has failed to provide me with such aid of counsel to do so.A Compulsory process is a fundamental elementary elemt of dues process. And a defendants right to a compulsory process includes the right to interview witnesses in advance to trial. State v Clark 765 P2d 916.

Either the court is wrong or the prosecution is wrong, in the case of the prosecution being wrong it has been determined: When improper prosecutorial activity interfers with the right of the accuses to effective assistance of his witnesses, it indicates a probability of incurable prejudice to his defense, the entire proceedings must be DISMISSED. State v Kearny 11 Wn App 394

Based on the argument fowarded in the first part of the argument and (b) above, DISMISSAL is yet again warranted, and requested.

ARGUMENT ON DENIAL OF "AID" (not hybrid representation)

As previously detailed Faretta holds the right to assistance is the right to aid. Faretta went ton to provide; Assistance of counsel is a constitutional right so basic to a fair trial that their infraction can never be treated as harmless error, and when a defendant is deprived of the presence of the assistance of effective counsel either through the prosecution or during a critical stage, reversal is automatic. (Applicable to being unrepresented ground as well)(and the ineffective portion is applicable to conflict hearings as well). Faretta v California 95 S. Ct. 2525 [Parenthesis mine]. Denial by State of right of accused to have assistance of counsel may in specific case operate to depreve him of Due Process of law in Violation of the federal constitution, where, ignorance, youth, or **incapacity**, of accused makes trial without counsel fair. Thorne v Callahan 39 Wn 2d 43.

To deny[stand by] counsel is not harmless error because assistance is a statutory right and harmless error is also inapplicable if failure to appoint counsel violates a statutory right' U.S. v Iasiello 166 F3d 212,214. The 6th Amendment which is made applicable to the states through the 14 amendment provides that in all criminal proecutions the accused shall enjoy the right to have assistance of counsel for his defense. The amendment serves to safe--gaurd the adversarial proceedings and process by ensuring that once the right to counsel attaches, the accused need not stand alone against the State at any stage of the aggreagte proceedings against him, the purpose of the 6th amendment to protect the unaided layman who finds himself faced with the prosecutorial forces of an organized society and immersed in the intracacies of substantive and proceedural criminal law. Bey v Morton 124 F3d 524,528

The Betts court declared the right to 'aid' of counsel, is of a fundamental character. Powell v Alabama 53 S. Ct. 55 A judges failure to make an effective appointment results in denial of effective and substantial 'aid'. Powell(supra)See Also Grosjean v American Press Co. 247 U.S. 233, 243-44(holding the 14 amend. provides fundamental right of accused to 'aid') Failure to provide assistance results in automatic reversal. Gideon v Wainwright 64 S. Ct. 1028

Consider the last; The Supreme Court in overturning defendants conviction for Murder, Robbing, and Kidnapping, and a Death Sentence, adopted the per se rule of reversal to govern situations in which a trial judge fails to consider to execise its discretion to appont 'advisory counsel for defendant who wishes to represent himself"People v Bigelow 37 Cal 3d 994 [691 P2d 994] (Likewise CDPJ Judge #2 Failed to even consider it at the second request.)

DISMISSAL is Warranted and requested

The court also erred in yet another way, when making the ruling the judge stated that appellant could have no attorney come on board, at all, for the duration, that action took the error to one more level.by making it to where appellant could have NO 'AID','STANDBY', nor 'ASSISTANCE', and when drafting the order made that clear to appellant, thus appellant could not even retain aid had it become possible.

Counsel may be retained to 'aid' prose defendant in preparing for trial. State v Jessup 31 Wn App 304,311. The court overturned conviction as to criminal because he was denied an opportunity to retain counsel. Chandler v Frietag 348 U.S. 45,68 This was just one more, violation of the 6th amendment. And looking backwards so far, as well as forward, 6th amendment violation(s)pervade these entire proceedings. If the 6th Amendment violation pervades the entire proceedings, harmless error analysis is inapplicable and the violation is enough to overturn the conviction regardless of the severity of the results. Satterwhite v Texas 108 S. Ct. 1792

In This ground DISMISSAL is warranted and requested

GROUND 8
NO COURTROOM AVAILABLE

In a contiuous string, another error on the thread occurs, the court continued the appellant on January 3 2005 to Jan 19 2005, at which time there were no courtrooms available appellant is not addressing that date in specific as other reasons were given, appellant has agrued it is nonetheless another date relevant to this ground. Appellant does not agree with the length either, which was also objected to as being (i)past 14 days 'cure' (ii)the state made the implied remark at the 01/03/05 hearing that there was none availble then as well.

However, addressing the court orders that note the only, ONLY, reason, for their contiuances as "NO COURTROOMS AVAILABLE.

01/03/06-01/19/06 No Courtooms available
01/19/06-01/20/06 'Morning to Noon' and 'Noon to Evening' (2Hrgs)
01/20/06-01/23/06 'Morning to Noon' and 'Noon to Evening' (2Hrgs)
01/23/06-01/24/06 'Morning to Noon' and 'Noon to Evening' (2Hrgs)
01/24/06-01/25/06 'Morming to Noon' and 'Noon to Evening' (2Hrgs)
(01/21/06 and 01/22/06 were weekend days Sat/Sun)

For the purposes of this review, appellant has requested the hearing of 01/24/06 that was not part of the VRP's provided to appellant, on the 24th appellant moved for DISMISSAL for lack of courtroom space, OBJECTED at every hearing to lack of courtroom space, ((And for the purpose of this review and the other orders involved, the record should reflect that the appellant never signed any of these orders in "aquiese", the orders should not reflect signatures from the first hearing after arraignment clear through sentencing, appellant did sign a restitution order entered by the judge, after appellant had been sent to prison and was brought beack for restitution hearing.)))

For the purposes of this review appellant will work off of the last NO COURTROOMS AVAILABLE Date that a record of VRP was provided for.

St: Good afternoon your honor... I am handing foward to the court Two continuance orders setting trial over to tommorrow as there are no courtrooms available. 6RP4

Ct: Good Afternoon Mr. Thomas. 6RP4

Ap: Good afternoon, Again I would object to not being sent out to trial. And I do have a Motion that I'd like to make with a couple objections as well, for the purposes of the record. 6RP4

Ct: Whats your motion 6RP4

Ap: The first one, I object to the denial of my motion to dismiss, on my right to be pro se ...My second one is overruling the objection to being sent out to trial. And this was scheduled ordered at 1-9 at 8:30 [Stenographic error should be 1-19] and continued for no space being available, and I objected then and I'll say it now "For trial Congestion" I object 6RP5

Ap: Number Three, allowing the prosecution to argue extra-judicial--well, My Juvenile points yesterday, in cause no 05-1-02436[34328-2]and applying to the- - that was scheduled for trial[- - = should be 'case'] and was not docketed, and the State prosecution argued this in my mind, at apprximately 2:30 PM until approximately 4:00PM because there was no trial space available. And at 4:00PM they stated because of the late hour they requested the court to 'recess' until monday morning, which was granted This was Thursday 1/19/06 6RP5

Ap: Fourth issue [Stenograhpical error as well] [but I objected to being assigned to Felnagle at 4:10PM "Which was after the close of court business].
I had preserved the issus by prevoiusly filing a motion by change of judge because of this judges actions and others. 6RP5 And have specifically raised the issue with Felnagle previously. In the interest of justice, this appointment should not have been made, and was still untimely. 6RP5,6 [What I was arguning to the court then was That the appointemnt was made after the close of business so it was erroneous and untimely at any rate]

Ap: [5th] In addressing the States brief regarding sentencing I told the court their response was telling in the States knowledge of no courtrooms available because; "Was filed on 1-19 at(1:30)and in the lower left-hand corner states the language 'Motion to stay proceedings' And I believe this was his whole intent for arguing my juevenlie points yesterday." 6RP6

Ap: Petitioners order continuing trial states 'no courtrooms available' and the petitioner asserts that the State extrajudicially argued these points at the time of trial commencement for the purpose that the motion was titled [in Corner] 'to stay proceed -ings' and to hold off my proceedings. 6RP6 [somehow make it seem legit]

Ap: [Petitioner was asked if I wished to sign the order of the court?]
"For the reason stated on this 'no courtrooms available' I do not want to sign the orders. I object to no trial space being available." 6RP9

[the 24th should contain language similar and a DISMISSAL motion to follow]

ARGUMENT

As if all the aforementioned reasons, and errors were not yet enough, for the State and they weren't, The Court then continued to violate speedy trial provisions for no other reason than --NO COURTROOMS AVAILABLE-- Appellant objected. VRP CP38-42, CP43-44, CP67. And moved for DISMISSAL all which as the court continued to say "SO NOTED" and "DENIED".

The Court has held that in order to allow meaningful appellate court review of such delays. The trial court must establish a record of why each Superior Court Department is unavailable, and whether a Judge Pro Tempore could reasonably be used. State v Finn 154 Wn 2d 193(citing State v Warren 96 Wn App 306,310.)

The record in this matter is silent as to this requirement. the only explanation given to appellant, by other officers of the court, were "The Holidays". While in the court forum, there are some things that are acceptable, have become the practice, or have become the 'norm' it is in no way right, (should this have been the true reason) But we dont know because effective and complete records were not made.

Notwithstanding all of the errors already committed, Just like the court personell involved, Appellant wished to be home as well with his family for the holidays, and plenty of others that have come and went, and continue to come and go, due to this inerrant conviction. The State may counter "He committed a crime" appeallant counters "And the State in trying to retain this alleged crime, has broken every proceedural and substantive rule and law, not to mention constitutional violations in an effort to keep this conviction."

ADDRESSING THE RECORD:

Early and repeated assertions of speedy trial right, weight in favor of defendant. U.S. v Schlei 122 F3d 944,987 Where the trial court failed to indicate number of courtrooms actually in use at the time of continuance, and availability of visiting Judges to hear criminal matter cases in unoccupied courtrooms, defendants speedy trial was violated due to congestion of dockets. State v Palmer 38 Wn App 160. State v Kokot 42 Wn App 733. It is the Governements responsibility for conditions such as overcrowding of dockets, and overcrowded dockets is not just cause for delay. U.S. v Santiago-Bercerril 130 F3d 11,12.

See also; State ex. Rel. James v Superior Court of King County 32 Wn 2d 451(Holding that prosecutors could not set up condition of court calendar as good cause for failure to bring the accused to trial within the required sixty days) State v Smith 104 Wn App 244(holding that court or docket congestion is not good cause warranting a continuance, and is not good cause for delaying criminal case beyond speedy trial periods, limits, and provisions.) State v Warren 96 Wn App 306 and State v Mack 89 Wn 2d 288,794(both holding setting trial beyond 60 day period is not justifiable by court congestion) U.S.v Engstrom 7 F3d 1423(forbidding continuance due to general congestion of court calendars)

At the timing of these continuances in appellants case, Appellant did not have alot to work with but cited to the court Arreola v Muni. Ct. 139 Cal App 3d 108. both in writing and orally, (holding that any continuance based on court calendar congestion DISMISSAL is warranted)

For this reason if not alone in contrast with all the other errors DISMISSAL is warranted.

Appellant is done with pre trial errors

GROUND 9

MIRANDA WARNINGS VIOLATION

Appellant had a pre trial statement issued in which the appellant had made a complaint against the officers involved, for refusing to give back some keys of appellants, that the state at trial claimed the keys were crucial to their case, because they believed , the keys"linked" me to the van, Defense counsel made the argument to the court that there was no keys or any other matter that was crucial "to link me to the van" because it was undisputed that there was a "rental agreement' in the van listing appellant as an additional driver, so if there theory was that they needed to "link" me to the"Van", it was failed assertion on the basis of the undisputed, and stipulated notion that the van was in fact, in appellants case.

Appellant asserts that the State in relying on this as the only reason for wanting and having the statement admitted, was a farce.

The issue of MIRANDA WARNINGS are at issue beacuse of all the officers that did testify NOT A SINGLE ONE HAD ADMINISTERED THE WARNIGS, The record here on appeal fails to evidence any such warnigs, as they were never given. Not even the General Warnings form provided at the jail.

Yet the trial court allowed this statement in Violation of appellants 5th amendment right against self incrimination. The State may Counter that the Statement was voluntarly made and appellant has cited cases below that clearly deal with that issue, further it is obvious that the Statement was not for the purpose stated by the State because of the other indisputable and again undisputed Rental Contract.

St: [to the court] There are some statements made by the defendant. I'm not sure if they are going to stipulate to those(statements) or if we need to have a 3.5 hearing.7RP46 I'm not sure Mr. schoenberger wants to do about the 3.5 statements or not. 7RP46

The State represented to the court :

St: One of the questions is wheteher or not Mr. thomas was involved in this crime. We need to link him to the van, which had some stolen property in it. The van was part of the Burglary. His personal keys were inside the van. 7RP47
So we need to link those keys to the van TO show that he was part of this incident.7RP47

APPELLANTS COUNSEL HAD JUST TOLD THE COURT ABOUT THE RENTAL AGGREEMENT

Another interesting piece of this record occurs when Officer Gail Connelly testifies

GC: We would need a signature releasing the those keys, becuase there was not a specific set of keys identifiable as Mr. Thomas's. 7RP65

Sgt.Larson :

SL: I was contacted early that morning by a patrol Sergeant that said that a Burglary had occured to a business, And they had two people in detention for that Burglary, So he asked my assistance and called me in... 7RP69

St: And where did you first make contact with Mr. Thomas? 7RP69

SL: It was at the lakewood police station. 7RP69

St: Did you have any conversation with him at the holding cell? 7RP69

SL: I did I asked him for his name

St: Did you Mirandize him at that point, or do you know if he was Mirandized. 7RP10

SL: I dont know, once I got his name and Date of Birth, I was going to Mirandize him. 7RP70 I'm in charge of the unit that handles Burglaries. This case was assigned to Detective Bunton Though. 7RP71

St: Did he ever tell you they whether or not they were taken from him. On his person. or Out of the van, or do you recall from conversation(S). 7RP71

SL: I dont recall. 7RP 71

This is a Sgt. who is investigating this case, and the State claims to prove the keys were in the van, is critical. However the Sgt. "Does not recall."

Defense counsel asks the officer a series of questions regarding the keys, how he knew that the keys at question those requested by the appellant were the ones the State was purportin to be those that came out of the van. At 7RP70,71 There were (3) sets of keys retained.

SL: How do I know the keys were taken from the vehicle during the_____warrant? Beacuse I wrote the search warrant and I was present there in execution of it 7RP72

Cn: But you are certain that the keys that Mr. Thomas was aking about were taken from the Vehicle? 7RP72

SL: From the vehicle, I believe so, without looking at the property sheet though. I can't Say. I do know, that we had possesion of them and that he tried to get them back. 7RP73

Det. Bunton :

After the State conducts direct examination ,No while the State is still going through Direct The State asks the officer, (Det.) when he first made contact with appellant where were we?.

DB: It was in a holding cell with him was Sgt. Larson 7RP81 (No rights been administered yet

St: And could you describe that contact if anything was said. 7RP81

DB: Well, we asked him if he wanted to talk to us and he told us no, we asked him what his name was and he told us nothing, he wasn't giving us his name. 7RP81

St: Did you read his Miranda Rights at that point?7RP81

DB: No. 7RP82

St: Is that beacuse he was just refusing to even talk? 7RP82

DB: Yes 7RP82

Still after no warnigs, the State asks the officer if he made contact again after I was Booked in? 7RP83

DB: We went to interview him at the jail but he refused to talk to us. 7RP83

In describing yet another contact without Miranda not yet given. the detective testified that he again intiated another contact, and had a telephone "Conversation" with Appellant.

The Detective in answering the state about making any subsequent contacts with the appellant different from those previously noted the exchange follows:

St: At any time did you actually have a personal Converstaion with him about retrieving those items [keys]. 7RP83

DB: Yes. 7RP83

Yet when asked why he did not release them the detatective testified:

DB: Because I felt they were instrumental as part of the investigation, putting him at the scene of the crime. 7RP84

This is a Detective who is continuing to testify about evidence that the State relied upon as incriminating. this detective must surely know the prophylactic Miranda Warnings and yet this Detective is steadily intiating contact's in regards to the keys, without Miranda warnings previously admininstered. The State would argue that the Statement was voluntary, the court never made the determination that they were voluntary, yet we go on, in spite of the Detective feeling these items were "instrumental" or "putting him at the crime of the scene" I submit it is unreasonable to allege that keys that were allegedly found in a van, places someone at the scene of a crime, when the van is not the crime scene. The Detective in desribing "any thing else" in the phone "conversation" states:

DB: I told him I would not be releasing the keys to him. 7RP85

When asked if he made any other contacts the detective testifies that he had made another telephone call in which it was his intent:

DB: He called to tell me he was not going to release the keys. 7RP85(but he had already related this information once, appellant suggest he was using the Keys theory to gain further incriminating evidence)

In an unrelated argument to the court counsel states "At no time has the defendant ever been given Mirand Warnings."7RP96

Sgt. Larson later as well during the trial, when asked by the State when he went back to the Lakewood police Deartment, what did he do?

St: Did you have an opportunity to talk to the defendant 7RP140

SL: He was in a holding cell, and I was told that he did not want to comply and give up his name , who he was and so forth. So I went back to see if I could talk to him an get his name , and so forth, so we (could) mirandize him. Interview him and see what ties he had in this and his involvement...7RP140

All of the officers failed to recall appellant being Mirandized (because I wasn't) But the officers recall Mirandizing the alleged co-defendant.
The judge over objection lets in Detective Bunton's Altered surveillance tape:

Cn: I would object your honor I think we are entitled to see the original. 7RP185

Ct: Objection denied. 7RP185

When asked were there other items found in the van the officer answer "yes among others"

"...also a Hertz Rental receipt in the name of John Blasco and Cory Thomas, An additional Driver." 7RP197

Clearly the State did not need to admit the unwarned statement, over objection to "link" the appellant, or the appellants keys "to the van". It is of importance that this Court know that the keys in question, did not operate the van, were not on the same ring as the van keys the keys were not critical to link the appellant to the van the keys were used as a bogus reasoning to insert incriminating eveidence, that would not have otherwise had any relevance. what is most telling about this whole 'Statement' Issue is the States final statement cited by the appellant, not to forget the investigating DETECTIVE does not recall if appellant told him that the keys came off of his person or not, but they are Critical??? 7RP371
It Should be noted; without Miranda the officers made contact at 7RP 139,140, 176, 180, 341, 385, 388, 423-424, 430, 431, 434-435, 446, And 449

The day after this arrest, Appellant made a complaint to the Police Department when they refused to return the unrelated keys that were taken off of his person, counsel for appellant asked the appellant to explain what was in this [which contained a complaint about, appellant asking for his property back, explaining that I wasn't part of it (allegations), and that i had been falsely charged and asked that the falsity of the charge be investigated by a Sgt. or Lt.]

The Same State of Washington Prosecutor says:

St: I'm going to object to relevance. 7RP374.This does not have to do with the evidence before the jury as to whether or not this crime was committed on the 27th. 7RP374

How contradictory, what was good for the goose in this case was not good for the Gander.

ARGUMENT

Law enforcement MUST use Miranda apprising defendant of the right to silence, in assurance opportunity to exercise it. Miranda v Arizona 86 S. Ct. 1602. 384 US 435,444.

This is to assure that the 5th amendment right against self incrimination does not occur The 5th amendment protects against compelled self incrimination. Ohio Adult Parole v Woodard 253 US 272,286 Clearly the continued contact compelled the accused to act in some way. Miranda warnings are indespesable to overcome its pressures and ensure that the individual knows he is free to exercise the privelege at that point and time. U.S. v Restrepo 994 F2d 173 185. The prophylactic miranda warnings themselves are not rights protected by the Constitution but are instead measures to insure that the right against compulsory self incrimination is protected. New York v Quarels 104 S. Ct. 2694, 467 US 649. Failure to administer Miranda warnings creates a presumption of compulsion, consequently the unwarned statements, that are otherwise voluntary within the meaning of the 5th amendment, MUST nevertheless be excluded from evidence under Miranda. Oregon v Elstad 470 US 298, 314-316. 105 S. Ct. 1089

Thus , even in the event the state attempts to assert that the statements were somehow voluntarily given, consistent with the above holding the unwarned statements were, are and should have been inadmissable.

Admission of testimony...[statement] obtained in the absence of the required warnings was first violation of the self incrimination clause of the 5th Amendment. Orozco v Texas 39 US 324,326. 89 S. Ct. 1095.

It is elementary that even the rule of exclusion, forbids such statements.

Based on this ground DISMISSAL is warranted and requested due to Cumalative error.

GROUND 10
INSTRUCTION COMMENTING ON THE EVIDENCE

The State Admitted Jury instruction Number #12 , that appellant feels was a comment on the evidence in the matter on appeal, and that was before appellants Jury. Appellants charge to this instruction was that Appellant had "obstructed" a "law Enforement Officer".

9A.76.020(2) Provides: Obstructing a law eforcement Officer
Law Enforcement Officer means any General authority, limited authority or special Commissioned Washington Peace Officer or Federal peace Officer as those terms are defined in RCW 10.93.020, and other Public Officers who are responsible for enforcement of fire, building, zoning, and life and safety.

The State Submitted to the Jury;

RCW 9A.76.020(2) =
David Butts, ryan Larson and Les Bunton are Law Enforcement Officers.

ARGUMENT

Appellant believes that by permitting the State to submit this instruction to the jury was an comment on the evidence, It was an element of the offense of Obstruction, that the officers that appellant was alleged to have obstructed were in fact "Law Enforcement Officers" thus the state would have had to prove to the jury beyond a reasonable doubt that the witnesses were in fact law enforcement officers, while one officer testified while in uniform, there could probably be no doubt as to his occupation. However, and nonetheless it was the States obligation to prove that they were all law enforcement officers, and that very may well not have been proven, with any particular witness. For the court to tell the jury what the occupation was, the court told the jury a element of the offense appellant was charged with.

Alleged instructional error in a jury instruction is sufficient constitutional magnitude to be raised first time on appeal. State v Williams 125 Wn App 335)2005). Appellant contends that like the appellant in Jackman(infra) in that case, the court gave an instruction holding Jury Instruction citing age of sexually exploited victim is per se prejudicial error, Because age was an element of offense. State v Jackman 125 Wn App 552(2005). Likewise in appellants case, the fact of the witness being a law enforcement officer, is an element of the offense of Obstructing a Law Enforement Officer. 9A.76.020(2).

Appellant also believes "failure to object to a jury instruction can constitute grave error within the Strickland test of ineffective assistance." Lucas v Odea 169 F3d 1028.

GROUND 11
INCOMPLETE POLL AS TO JURY'S VERDICT

Appellant takes notice in revieweing the Verbatim report of proceeding that where the jury was polled as to if it was in fact their true and correct verdict, all jurors answer in the affirmative, with a "yes", Juror Number #3, when asked if this was that jurors verdict is BLANK as to his/her response. there is neither an Affirmative "Yes" or "No" 7RP454.

GROUNDS 10 AND 11 WARRANT DISMISSAL IN LIGHT OF OTHER ERRORS, AND ON THEIR OWN.

GROUND 14
MISTATEMENT OF EVIDENCE IN CLOSING ARGUMENT BY PROSECUTION

For this ground, in that counsel for appellant on appeal, argued some different instances of the prosecution misstating the evidence, and its prejudicial effect, without belaboring her points, in this ground appellant respectfully request that this court apply her rationale and argument in support of her noticed misstatements, in relation to the misstatements below, as the argument is the same, and appellant feels her argument is the best before this court.

1st Instance

The only testimony in the complete record, with appellant, about any alleged "Bathroom" "Toilet" or alleged "Flushing of a 'SweatShirt' while in the bathroom" was dicussed by the appellant with the State in its entirety below:

St: And you went into the restroom, correct.7RP384

Ap: I used the restroom, while I was in the station, yes. 7RP384

St: And you tried to flush that item down the toilet correct. 7RP 384

Cn: Objection, outside the scope of direct. 7RP384

Ct: Objection Denied. 7RP384

Ap: No I didn't try to flush anything down the toilet. They told me that I had tried to flush the shirt down the toilet and I told them I had not tried to flush anything down the toilet. 7RP385

St: And then you took the jacket and you tried to shove it up into the roll holder correct? 7RP385

Ap: Never had a jacket. 7RP385

St: The Sweatshirt. 7RP385

Ap: No, I didn't take any sweatshirt and try to stuff it up in the toilet roll. 7RP385

In Mistating the fact in evidence the State told the jury.

St: Mr. Thomas, I would submit to you, went into the bathroom, ripped up his swaetshirt, Knowing that he was going to be on video tape, ripped it up and then tries to hide it. **He tells you**, I dont know what happened to it. It was just there. 7RP726

Appellant never testified that It was just there, and for the State to tell the jury under the cloak of (He tells you) is not what appellant told the jury or testified to.

2nd Instance

In another Misstatment, and inferring guilt inrelation to both this alleged crime, as well as having the van that was rented by appellant weeks earlier, The State made the impression to the jury that (a) the van was first got for some illegal purpose weeks earlier. (b) that the van was not in fact back when it was supposed to be, 5 days later than the "Original" contract that was in the van (b1) that this van was kept for the purpose of committing this crime. (b2) and that the van was "Discovered" by the officers on this night.

Appellants concern with this inference was that the state testified,as an unsworn person to the jury, about fact that were not in evidence, at all.

The Rental van was agreed in a different agreement,that it could be kept longer than "Originally" agreed and that the same rates would apply.Even subsequent to this incident appellant paid all fees due of the minivan. For the State to, in essence, infer Guilt, based upon his personal 'opinion' the state became an unsworn witness against the appellant, and that unsworn witness, testifying to fact not in eveidence.

The van was never discussed at any point on the record about when it ultimately had to be back, nor that if the van was overdue as far as payment, nor were there any fact in the record to support the States assertion that the van was somehow being sought, and it was the officers who "DISCOVERED" it on this incident night.

The States testimony in closing arguments were that, it should have been returned on 5-12-05, and since this incident happened on 5-17-05, the van was "Five days Overdue". 7RP427 and that it was kept for the purpose of committing this crime, and "it was Finally Discovered by the officers on May 17th". 7RP427

Appellant contends not only did the State in clsoing arguments Misstate the evidence, the State also 'Testified' for facts that were not and are not in evidence, the State used those "personal opinions" to infer guilt, based on nothing more than this was this prosecutors personal opinion, and the State is invited to make a showing of how and where the record infers, implies, or supports, this personal opinion testimony.

Third Instance (with three misstatements included therein)

In yet another instance of misstating, to jury with the intent to mislead the jury, the following exchange occured. (at relevant part appellant testifed to);

Counsel in direct asked the appellant, how did I know to go to the B&I to purchase cigarettes?

Ap: Because Jamie had called me and told me that I need to come there in order to get the Cigarettes, If I wanted to buy them, He was supposed to bring them to me, But he didn't. He told me I had to come and get the cigarettes and my van. I had his car. I went there to meet him in back of the B&I. 7RP369

The State in cross examination; "That van..""and you just testified you were called and drove and drove your car there. Is that correct? 7RP389

Ap: No, I didn't drive my car there, I drove Jamies car there. 7RP389

St: And the van was there. Is that correct? 7RP389

Ap: Jamie was in my van. Yes 7Rp390

St: And he's driving your van with you permission. Is that correct? 7RP390

Ap: Yes 7RP390

St: So you allowed him to use that van and you knew he had cigarettes? 7RP390 And you loaned him your vehicle and he--and you pre-arranged to meet at the B&I to purchase those cigarettes? 7RP391

Ap: (No I pre-arranged)to(purchase them). He called me , and told me thats where I had to come and get them, is at the back of the B&I, and thats where I went to get them. 7RP391

Counsel on re-direct ask the same line of questions and the same resonses are relfected in the record.

In Misstating the evidence that was in the record the State testified;

St: Then we have Mr. Thomas... in fact we have everything Mr. Thomas said. I want to go over that. **(He Says)**[he is appellant, as in appellant SAYS] he loaned the van to Jamelle the night before. Jamelle was going to get him some cigarettes. He was to meet them behind them B&I between three and four oclock. Jamelle has his own vehicle. Everyone has vehicles thats involved in this but yet they still rent a van. why?...7RP428

(i)

The record nowhere reflects "they" rented the van, as in me and Jamelle, this was a misstatement of the evidence, that is nowhere supported by the record.

(ii)

The record will reflect that appellant was not "To Meet" as if its was pre-arranged for, "Between three and four oclcok." Appellant testified in response to a question, that I "left home" about 3:00 or 4:00 in the morining, because thats when I was called, and told I would have to come there, to get my van and cigarettes. At 7RP367 in response to the question of "how did you know to go there. 7RP368 "Because Jamie called me and told me that I need to come there in order to get the cigarettes if I wanted to buy them. He was Supposed to bring them. But he didn't, he told me I had to come there and get the cigarettes and my van, I had his car, I went there to meet him in the back of the B&I. 7RP369

For the State to misstate the evidence in this instance allowed the State to mislead the jury, and testify in closing argument to facts not in evidence, Appellant clearly Stated that I left in response to a call recieved between 3:00 and 4:00.

To turn that around, and state that I had pre-arranged to meet someone at 3:00 or 4:00 in the morning would be unreasonable to any person, or if not unreasonable, highly irregular to "pre-arrange" "to meet" "them" at 3:00 or 4:00 in the morning is uncommon, and the State intentionally mislead the jury by such statement, that was and is not supported by the record. and not to forget, he told the Jury that thats what'I had said' to them, when in fact that that was not what 'I said'.

(iii)

The State told the jury that appellant had "said" that "I went to meet them in the back of the B&I" 7RP428

When the record clearly reflect appellant testified that "I went to meet him in the"7RP369

The State craftfully took appellants testimony, and misstated that testimony to the jury to again, mislead them, and imply that appellant knew he was going to meet "them" who were involved in the Burglary, when In fact I was going to meet "Him" to get my vehicle and the cigarettes I wished to buy from "him". The appellant is not an attorney, but it is clear how thw State took this simple word and used it to imply that I knew I was going "To Meet" a group or more than one person, and implied that I knew what all was going on.

The State became an unsworn witnesses against the appellant again and mislead the jury by misstating facts not in evidence nor supported by the record.

Fourth Instance (with three misstatements therein as well)

In yet one more instance of Misstating evidence and inferring guilt by facts not in evidence, the State make two more statements appellant catches;

St: Mr. Thomas gets in the van and said the police immediately pulled him over. 7RP428

Ap: [Testified that Jamelle was still behind the wheel and the police pulled Jamelle over] 7RP369 at Line 15 and 7RP378.

Further Detective Bunton testified about the keys that Appellant described to him as being my keys, in this exchange;

St: He originally said there was an Albertson's Card(and)Chrome on them. Did he give you any other discription of the Keys? 7RP311

DB: No. 7RP312

Detective Bunton also gave another statement at a later point of questioning in which he stated;

DB: He said the keys were on a Chrome or Aluminum hook, He also said there was an Albertsons Preferred card on the Key Chain. 7RP199

The State again in his continued misstatement of evidence in implying guilt, in relation to these keys that were "instrumental" in "linking appellant to the van" and that it was an "Admission" by my requesting them back, That I was there. The State misstates by saying;

St: He [appellant] describes the keys to Les Bunton, He says they have an Albertson's Card on Them, Eight Keys, and its kind of Chrome.&rp430.

He took the last kind of Chrome, statement to throw off that he had just told the Jury, that"I" said they had eight keys on them, totally untrue, not supported by the by any witness and is a misstatement of the facts to say appellant said "there was eight keys also"

------Lastly---- The State Testified in Closing that "It's the van they used to get into the Building" 7RP432 He request the keys, again his own admiddion puts him in the van. 7RP434

The record nowehere reflects"the Van(was used) 'To get into the Building'

THESE ERRORS IN LIGHT OF ALL OTHERS WARRANT DISMISSAL, AND DISMISSAL IS REQUESTED

GROUND 15
"BUT FOR" COUNSELS ADDITIONAL ERRORS

In addition to the previously mentioned errors at pretrial stages, Counsel for appellant made the following errors;

Appellants counsel aks the question in her brief if "Counsel was Struck Dumb" Appellant asserts that while in many instances the appellant felt like counsel had been struck dumb as well, Appellant believes the answer to her question lies within this first counsel error, and on the opposite side of that token, supports appellants claim below.

Regrettably appellant in the last year of researching these issues, came across an exact case law dealing with this error, but appellant thought like in relation to many of the other errors there would be no way I would recieve certain transcripts surpirse I recieved the VRP's but negelected to take that case down, relying on that unfounded thought.Appellant moves this court to view it in clear error standards.

While in trial, appellant continued to point to my counsel without his knowing, clearly showing the judge what I was seeing and experiencing, the Judge simply rolled his eyes at me. Before going into this ground appellant believes it is of importance that the court know that in the trial prior to this case on appeal [that trial 34334-5] Appellants Judge commented that appellant was "arrogant" and "had a habit of swimming upstream" appellant at another point in that record, made the comments that I felt the court was conducting my proceedings corruptly and also had an issue in which the judge and prosecutor had ex parte communications without me while I was pro se, and had just objected to any such contacts only hours before, when I addressed it with the court among denying it at first the judges question was "How does that prejudice you?" [the ex parte]. _____ I say that to aquaint you with the repor between me and this same judge who had the following exchange.

After Pointing at my lawyer and seeing the court fail to act, I sat there as the State went through various different testimony's and drafted out a Motion for Mistrial, based on what the Judge,Jury, and Myself watched. My Trial Counsel was asleep, with his head leaned against one hand, he dropped his pen, not knowing so because he was sleep, which hit the Table at a quiet moment in the trial, and caused everyone to look at him, with him still not awaken by the sound, [one juror member smile innocently]. When I realized the judge had not stopped trial, and of course the States witness was babbling foward, Testifying against myself I had done what any reasonable person would do, I woke him up, as he sat there as if to be angry at me for awaking him, I was angry at him and handed him the Motion For Mistrial that I had prepared at the table by hand, he took it sat it down and we continued. We eventually had a recess, and upon return the following took place;

AFTERNOON SESSION OF TRIAL

Ct: Ready? 7RP214

Cn: Good Afternoon, Mr. Thomas has a hand written motion he's aked me to file with the court. 7RP214

Ct: Okay. 7RP214

Cn: With copies for conforming. 7RP214

Ct: Are You ready for the jury?

St: The State is ready for the Jury. I think the court need to address(the)issue before we go Any further. I have a copy of that.

Ct: Objection Denied, Lets move on. 7RP214

St: Your honor should I have the Detective take a seat? 7RP214

Ct: Sure.....For The record I find the motion completely unsubstantiated, Lets move on7RP214

(jury is present again) 7Rp214

And then just like that the court moves foward, mind you this is a Motion for Mistrial, based on what the Judge has seen. No response from counsel or anything, till much later...

We left off at 7RP214, We are now at 7RP284, when D.P.A. Marcus Miller raises a concern, we've just finished the testimony for the afternoon and we are now about to recess for the evening, [Notwithstanding his errors, I said M. Miller Was for the most part ethical.]

on our way to recess the following occurs;

Ct: Anything else? 7RP284

St: Your Honor, I just wanted to make sure the record is a little clearer, about the Motion that Mr. Thomas brought earlier. There was a handwritten motion that was filed indicating Mr. thomas believed that his attorney was ineffective and sleeping through the trial. And the court made a ruling and denied the Motion for Mistrial. I'm going to--I'm assuming the court was able to observe and saw that Mr, Schoenberger was not sleeping through the trial. 7RP284

Ct: I haven't seen him sleeping. 7RP284

St: Thank you, just wanted to make that clear for the record. 7RP284

Ct: Thank you. Tomorrow Morining, 9:30.

As the judge stands to leave the court room, still with no imput from the attorney whatsoever. It is obvious that he had no intentions on addressing it or ruling a granting of my motion he made the determination without even a peep from the attorney, just obejection denied. I take it he realizes a record is being made based on M. Miller and he says;

Ct: Anything you(want) to say on that motion. [to Schoenberger] 7RP284

Forget about anything I have to say on the matter, I wasn't heard at all then, or later, but I clearly understtod why, because had seen it himself, and because of our communications thus far [me and the Judge] But What is even more shocking was schoenbergers response;

Cn: Your honor, if it would help Mr. Thomas, I would admit(to snoring)loud enough to keep the Jury awake. 7RP284

Ct: Thank You. 7RP284

(adjourned)

Now one would think he maybe really didn't admit, and appellant suffering the consequences of such actions would assert, he in no way denied it. in fact he didn't even lie. Maybe that rolled over easier on his conscience, 'ethically' because he told the truth.?

And to add insult to injury, the Judge the very next morning after the jury is brought in;

Ct: Good Morning, I think I've told you the heating system. It's either too hot or too cold. Helps a little bit to stay awake. 7RP287
Continue. 7RP287

The State proceeds forward, appellant has no case law for this issue, but it is clear that "But for Counsels Sleeping, the outcome may have been different."

This 'Grave Error' warrants DISMISSAL alone and is requested.

----------Next Error, but for Counsels actions----------

Appellant assert that my counsel erred gravely in his closing argument by, implying, inferring, and even implicating myself, as well as failure to maintain my innocence. Counsel in Closing remarks make the prejudicial statement of;

Cn: If nothing changed then maybe he attempted to hide this or obstruct. But as I said, he's not charged with attempted obstruction, and I dont think it worked anyway, 7RP440

Appellant believes this was prejudicial from defense counsel, implying he doesn't think it worked anyway, as if, if I did what they allege, "it didn't work anyway".

But the more troubling thought is this Statement below;

Counsel in closing arguing the Accomplice Liability Instruction, after explaining the elements, make the prejudicial remark of;

Cn: Did Mr. Thomas loaning the van to Mr. Stevens 'aid' him in the commission of the crime? Yeah.7RP441

And counsel goes on;

Cn: It probably did, Because he could steal more and throw it into a van than he could if he had a smaller vehicle. 7RP441

Now I have to ask after all those 'different' prejudicial remarks, was counsel struck dumb, and with all do respect, I think so. And I think I was subjected to [as my counsel puts it in relation to 'different' errors] UTTERLY INEFFECTIVE ASSISTANCE COUNSEL, appellant agrees as it is held that appellant is not entitled to perfect counsel, but I am entitled to counsel who is functioning as counsel that the 6th amendment provides for [the errors in 34335-5] [which these cases were 'tracking' has even more and similar outrageous, and unbelievable errors by counsel]

Before appellant goes any further I have to express to the reviewers, that sarcasim, I do understand is probably not favored, but being totally real, to relive all of this by just typing it alone, if I dont in essence laugh, I'll cry. And that is the God Honest Truth.

Lastly on counsel;

Counsel goes through two trials, with me 34335-5-ii and 34328-2, and it is not until the close of the second trial, that counsel, submits a Motion to Withdraw based on a Conflict of Interest, Appellant understands That I must show that he was operating under conflict, Counsel in his Motion tells the court he cannot work with me any longer because our communica--tion has broken down to the point of being irreconcilably broken down, but the reason counsels Motion is telling is because (i) it is not filed until the completion of two trials so to be honest at that point, what does it matter, its all over, I'm convicted. But (ii) Counsel states that the breakdown has been caused by "Filings made by Defendant CORY LAMONT THOMAS in Cause number 05-1-02436-6 [this appeal] have created a conflict of interest between the defendant and his attorney." Exhibit__ Counsel made this fifling in the third cause number, many of you may remember from the intial proceedings, that Appellant was aquitted by a different jury in a diffent department than the biased trial judge here, Appellant will admit that that proceeding was before the HONORABLE Fleming, and the proceedings were fair Appellant was aquitted on all four counts.

Nonetheless appellant knows and the records reflect that the filings were on the cases on appeal, and so at that time the conflict logically had to be at those times, since thats where they originate. There is argument below.

ARGUMENT(S)

When a defendant can show that there was an actual conflict of interest, adversly affecting counsels performance, he need not show actual prejudice or that trial would have come out differently if there had been no conflict. State v Phillips 108 Wn 2d 627.

Other cases at the outset of this brief explain "Conflict Counsel is ineffective assis--tance of counsel" Nonetheless,

To represent a criminal defendant up to the point of trial, notwithstanding a potential conflict, known by counsel, but undisclosed to client and only then disclose the conflict of interest. Is not adequate representation. State v Thomas 95 WN App 730 [Thomas not appellant]

Here counsel not only represented me up to the point of trial, because I had filed "FILINGS" pre trial with him as counsel, this counsel represented appellant all the way through TWO trials and when it no longer made a difference filed a Motion to Withdraw because of that conflict. I submit I was subjected to ineffective assistance, and DISMISSAL is requested, for this error and the slew of errors aforementioned.

This counsel failed to preserve any appeal issues, thank God for the record. The assistance of counsel requires a lwyer to raise all non-frivolous claims. Jones v Barnes 463 US 745, Just like speedy trial, Counsels failure to raise appellate issue regarding the defendants right to speedy trial was ineffective. because counsels deficient performance creates a presumption of prejudice. McGurk v Stenberg 163 F3d 460,475.

Additionally Counsel at my sentencing told my Judge, who was already against me, that I was a troubled young man, and that I didn't get the help I needed while I was at JRA [juvenile rehabilitation Adminisration], appellant was seeking to not go to prison based on all the mitigating factors, college, GPA 3.9, No adult Feloines, No Domestic Violence Convictions, In spite of, Counsel tells the judge that I need some time in"DOC" Counsel basically told the judge I had not been amenable to the treatment while there which was totally untrue an contradicted appellant is 29 years old and has had no felonies since Juvenile matters age 14 and 15 from 1992 and 1994.

In a case involving a death row inmate it was held "Counsels Public Statement that death row inmate was not amenable to treatment, was ineffective assistance of counsel because comment indicated abandonment of loyalty, and disregard for clients interest. Osborne v Shillinger 861 F2d 612, 628 Counsel did not ask for a low end, counsel had no strategic purpose beind this, in fact counsel should have raised the mitigating factors known to him. "Counsels failure to raise obvious and significant issue[mitigating] was ineffective assistance because it was without legitimate or strategic purpose." Mason v Hanks 97 F3d 887,89

The right to counsel gauranteed by the constitution contemplates the services of an attorney devoted solely to the interest of his client. 322 US 708,725 Counsel failed to object to jury instructions, I could go on and on about counsel, and appellant hopes it will not be used against me later for not doing so, But there are a few other Errors.

Counsels Deficient performance requires DISMISSAL and I hereby request such.

Appellant will only raise three more issues.

GROUND 16
JUDGEMENT AND SENTENCE VALIDITY

Appellant was sentenced in this cause to 22 months, the judge as sentencing VRP's will reflect, on the last page after he had given me an exceptional in 34335-5 we were going off the record when I told my counsel he did not even [the Judge] say what the sentence was going to be in this case and have him at leat put that on the record. So Counsel asked him to state his sentence on that case, it was a 17-22 month range with no question about it the Judge stated he was just simply going with the 22 months.

Appellant concern at this time is that appellant Believes a Blakely issue exist. In That the appellant was sentenced to 22 months and was given an additional 9-18 months of Community Custody, through reading the cases involving this issue, appellant believes in the unlikely event of a Community Custody Violation [should these judgments not be reversed] If for instance appellant is for some reason "revoked" Comm. Cust. Revocation, in that event the appellant would have to serve a sentence of 9-18 more months on top of my Maximum Standard range, already served in essence resulting in appellant serving 31-40 months when it would all be said and done and appellant believes such event would reult in a Blakely violation, because in essence appellant would be serving more than the Maximum Standard Range, and though this court has held the Community Custody is an 'Enhancement' appellant would respecfully submit whether 'enhancement' or 'exceptional' its end result would be an exceptional sentence served because it is in excess of the Maximum Standard range.

ARGUMENT

Other than the fact of a prior Conviction, any fact that increases the penalty of a crime beyond the prescribed statutory maximum, must submitted to the jury and proved beyond a reasonable doubt. Apprendi v New Jersey 530 US 466, 490. Our Courts have not defined the exact meaning of the term Maximum as is some cases the State may argue it is say 10 years for a Class B or 5 years for a Class C, and in other holdings the courts have held the Standard Range to be the maximum, [or anything in excess thereof is an exceptional] So appellant will go the easiest way know to appellant at this time and ask this Court apply the Rule of Lenity, as far as the term "Maximum" "The phrase at or near the 'maximum' term authorized is ambigious." U.S. v LaBonte 520 US 751, 758-762. 117 S. Ct. 1673, 1677-1679

A Judge cannot find any fact used to increase a defendants sentence beyond the Standard range Sentence, as this has to be submitted to a jury and proved beyond a reasonable doubt. Or admitted by the defendant. State v Ose 156 Wn 2d. 140,148(2005)(citing Blakely 542 US 301).

Since the Statutory Maximum is the Standard Range, "Except as otherwise provided, a court may not impose a sentence for a term of confinement or Community Spervision, Which exceed the Statutory Maximum for the crime. State v Zavala-Reynoso. 127 Wn App 119,124(2005). State v Vanoli 86 wn app 643,645

Imprisonment plus Community Custody may not exceed the Statutory Maximum. State v Hopkins 109 Wn App 558,569. See also Easterlin 126 Wn App 170.

Should this court hold that the Community Custody does not exceed the "Statutory Maximum" Appellant nonetheless asserts that any such violation be addressed in specific terms, as held in Sloan below. As of right now appellants Judgment and sentence does not conform with the specific requirements held by Sloan.

When A defendant is sentenced to the Statutory Maximum, and also sentenced to Community Custody, The Judgment and Sentence should set forth the Statutory Maximum and clarify that the term of confiment may not exceed that Maximum. State v Sloan 121 Wn App220,221(2004).

GROUND 17
INJUDICIOUS CONDUCT
AND CHANGE OF VENUE DENIAL

In this last Ground, Appellant understands that it is about the most rare of all claims that is granted in just about any appeal, nonetheless appellant feels as though my judge was, and is biased against myself.

Appellant had previously filed a notice to answer, to all judges whom dealt with my case, this request is included in the exhibits The notice to answer was filed based partly on the same reason appellant had mentioned in my Change of Venue request which is also here as an exhibit In the Change of venue and notice to answer, I was seeking to have venue change on tne fact that, I had sued and prevailed with Compensatpry and Punitive damages awarded by A Jury in Federal Court at Tacoma, In the litigation, I sued, The City of Tacoma Tacoma Police department, The Mayor, The City Manager and The Chief of Police. along with some 22 individual officers, during the course of that litigation Several Judges who were members of the Pierce County Judicial Commision, repeadtly recused themselves from cases involving myself, about over 95% of which were traffic related Misdemeanor cased Instituted by Tacoma Police Officer. One Pierce County Judge "Judy Jasprica" had actually been served with a subpeona, at her home, because the City of Tacoma said for me to be prosecuted by the City in Municipal Court was a conflict, so the case went to the District Court Judge Jasprica, she did some things that caused the attorney to serve her with the subpeona as a witness and a party thereto, Immunity I believe kept her from becoming a defendant. Self - attorney's within Pierce County were for one reason or another, were actually disqualified from representing myself.

That case became so exstensive and widely known,many of you may know who I am, unbeliev -ably to myself and Honorable Judge Emery, The City at point actually themselves filed affidavits of prejudice(s) against him so that he could not hear my cases, And I must add I personally highly respect Mr. Emery and he is the fairest judge in Pierce County who I have ever been before. Needless to say I was well known by the majority of the Pierce County Legal Professionals. And becuase as it seems like the majority of attorney's like myself, The majority of Prosecutors have a strong dislike for myself, as for judges, I would have to say a percentage likes me, a percentage dislikes me, and I must say I think the other percentage would rather not just be involved with me either way and I cant say would have an opinion either way.

There was one trial actually in misdemeanor court that the prosecutor stopped the trial and had us go up to the honorable Judge Marywave VanDerans court room, because the City of Tacoma filed a writ of extraordinary proceedings, asserting that the Honorable Emery was not having fair proceedings,[in the City Eyes]. I am not sure if she is there anymore but I was told in the course of the trial that is on appeal, that she was in Division Two and not to worry, as she would Dismiss the cases when I got there, I am not sure if she is there or not?

With all that said I say that based on the things and the fact I gave Tesimony to the Washington State Senate, along with other things I cant remember right now, like Media coverage. ect. I did not want to brave the risk of ending before a judge who was on the dislike me side, Apparently I did, This judge gave me an exceptional sentence based on misdemeanors only [34335-5] that were a part of this litigation above.

So rather than brave those hazards I put in for a change of venue, and a notice to answer from any judge who had ex parte contact about me, to attempt to insure a fair nuetral and detached arbiter of the facts. My trial Judge refused to answer it and how true it is I dont know, But I have since been told he was in the City of Tacoma and was assigned to the Pierce County Superior Bench by way of governor due to lack of minorities on the bench at the time, at the least I ended up before him, and he throughout, showed his prejuidce and Dislike(s)

When I started my trials before him I made a record objecting to any ex parte contacts only to have hours later, another attorney tell me that My Judge and prosecutor had been in ex parte communications about my case, which is a ground in 34335-5, When I asked the judge he flat out denied it, then the prosecutor immediately thereafter said that a record needed to be made because obviously i knew, at which point he acted as if it was nothing and asked me well "How does that prejudice you?" VRP_____[I have that portion in the VRP's provided to me but didn't intend to raise it in this ground, soI didn't write it on my work product for this case I will go back and add it] .

The matters are properly before this court as they became part of the record. About the notice to answer, I dont know how to resaerch that, as for the change of venue I believe there was sufficient reasons to have me tried outside or Pierce County in these matters, The was a motion filed, in this appeal that is a exhibit and titled "motion for Change of Venue Cr.R.5.2(b)(2) and Change of Judge under Cr.R 8.9 and RCW 4.12.050" CP_____ Appellant first believes that the court erred in failing to grant a venue change.

ARGUMENT TO CHANGE OF VENUE

Motion for Change of venue should be granted when necessary to provide defendant his due process gaurantee of a fair and impartial trial. defendant need only show a probablity of unfairness or prejudice. State v Rupe 108 Wn 2d 734. Due process of law requires that motion for change of venue be granted where there is a showing of either actual prejudice or probable prejudice. State v Haugland 454 P2d 1237. Actual prejudice is not required in making change of venue motion. State v Banner 587 P2d 580, State v Jackson 46 P3d 257.

Widespread bias in community can make change of venue constitutionally required. McCleskey v Kemp 107 S. Ct. 1756. Defendant must establish either presumed prejudice or actual prejudice to warrant change in venue. U.S. v Rewald 889 F2d 836 (9th Cir)

Appellant is not challenging the issue of the jury being prejudiced and at first sight it may appear to be a moot issue but appellant asserts this ground, for the exact reasons that occured, i.e. a biased judges, subsequent adverse rulings, record preservation, sentence impositions, Motion address, timeliness of rulings, effect of rulings, personal feelings, opinions, prejudices, and biases on the bench. Ect.

Now appellant does not necessarily expect to prevail on this error but again appellant is before this court on Cumalative errors.

B

Second Instance of Judicial Vindictiveness, and Injudicious Conduct.

Appellant truly believes some of the instances involving the trial Judge were in fact Vindictive, but appellant coins this ground as Injudicious Conduct, because it is a slippery slope, to be raised against a judge, at the very least it is how I percived the action to be.

Notwithstanding denial of the the ex parte, denial of mistrial motion without an inquiry first, denial of every other motion and objection, refusal to answer the notice to answer, the fact that the judge called me "arrogant" and commented that I "had a habit of swimming upstream" Had hearing without my presence[raised in 34335-5] over objction and motion, gave me an exceptional sentence as a first time adult felony conviction of record, refused to address any of my Cr.R 7.8 motions, refused to grant an appeal bond in light of clear errors, restricted cross examination, I could go on and on, but the very last thing this judge did is something to always be remembered, and he made that abundantly clear;

This ground was and is the hardest to type and or reaserch, to even read on the VRP's again to brief it, in this ground I will attempt to take a detached position and raise it with as little as my own emotions as possible;

At My sentencing hearing appellant had an attorney who volunteered to come from Seattle Washington, drop his schedule for the day and speak on my behalf, appellant believes his remarks are worth raising in the ground as it is part of the record.

Appelllant believes as for Washington State Bar Association Members, Mr. Lembhard Howell WSBA #133, is well known in the judicial arena, and the opinions and observations he made are very much appreciated, And I will always be thankful for his honest assesment even parts I did not agree with.

Appellant trial attorney states;

Cn: We also have a second matter to discuss after, perhaps after sentencing. Mr. Thomas's Grandmother has died, and we will be asking the court to allow him to attend her funeral tomorrow. 7RP457

Mr. Thomas, his parents have both passed, he was essentially raised by his grand--mother. 7RP462

Appellant believes at another point the court was made aware that my Grandfather had passed as well, and this was the very last parental figure in my life.
After the State went through the charges and time request, a few other people speak on my behalf, and then the court, after stating he had already recieved a letter from the attorney who was there from seattle, made the impression that there was no need to hear him in person, Appellants trial counsel made the request for him to speak anyway since he was there, the court allows him to.

LH: Your honor, I think this court may be aware of the circumstances of family circumsta--nces concernng cory, when he was a youngster [19], his mom died and was in an alleyway and wasn't found until six weeks afterwards. 7RP469

The reason I know him is because for 3 years we were dealing with that case and he had to make numerous appearances in my office.[The Case was Thomas v Tacoma]
There's no question he's a productive citizen. I'alos know him not always to tell the truth, I also Know that I [Howell] can be obstinate and hard headed and refusing to listen, But I also know that he is a kind person. How can I tell you he's a kind person? I can tell you that because in that case there were other plaintiffs with him suing the Tacoma police department and a number of officers. there must have been some 77 Claims only one prevailed and in that claim Cory prevailed with compensatory damages of $15.000 but $20.000 in punitive against the officer. So he had a $35.000 judgment,

Because his uncle was in danger of losing his house if there was a second phase of the trial dealing with counterclaim . Cory reduced his judgment to $10.000 and Vacated the judgment against the officer... Now knowing that he had this ongoing animosity with members of the department, that was quite something for him to give up. But he did.

Your Honor I find him to be extremely bright and intellegent. I've told him several times to leave this community... I have no doubt that in the right environment he would become an outstanding lawyer. And I say that without reservation... I see an awful lot of good in him. I wish there was Cruel and Unusual punishment. Contrary to the 8th Amendmen; So he could be whipped for his misdeeds. But Your Honor, I think I know people, after practicing law for close to 40 years. And I will represent to the court, as an officer of the court, Cory is not a criminal, he's not a criminal. Thank you for allowing me to say this. 7RP471

St: Your Honor, the state's view is actually rather different obviously. 7RP471

The Court asks later if there was anything else? 7RP474

Cn: Your honor I'd like to address the issue of his grandmothers Funeral you hononr.7RP474

Ct: We Dont do that counsel, once they are sentenced to prison or jail, you dont let Themo out. 7RP474

Counsel then tells the Judge about a proceedure that the Pierce County Jail has for the purposes of funerals, with detainees in their Jail.

Cn: The Funeral is tomorrow Judge. 7RP474

Ct: Who's gonna pay for this?7RP472

Cn: There are two ways he can go to this funeral...(Counsel explains the fees that the jail charge 'if he has $300.00')
The other way he can attend this funeral, which would cost no money, is if he were to be given a temporary release by your honor to the custody of Mr. Howell. Who has agreed to take him and be responsible for him and take him to the funeral and return him to the jail. The Funeral is tomorrow. This is Betty Erwin who was his grandmother. this is the woman who raised him. It is very important to Mr. Thomas to be at her funeral. We Would ask your honor allow him a temporary release in the custody of Mr. Howell, for that purpose with whatever restrictions and limitations you might impose timewise. The Funeral is at 1:00 it's four blocks from here. It's not very far. In the alternative, that he be allowed to be transported by the jailers our concern is that they need two officers. they come from volunteers. Sergeant James has just informed me that they have one volunteer. So it's not enough. Even if your honor were to order that, we can't be sure that he would be--that they would have a second volunteer by 12:30 tomorrow to transport him. 7RP475

St Your Honor, the State is of course, is adamantly apposed to the court releasing the defendant to the custody of somebody other than a Law Enforcement Officer. But in no circumstances should a man who just got 75 Months [exceptional sentence 34335-5] in DOC be let go with a promise to appear to a man--to counsel, who frankly was very honest with the court when he told the court, cory will lie to you and to put into cory's hands the ability to come back or not, if he so chooses would be a huge mistake. 7RP476

Ct: I'll only do it with the escort. 7RP476

Cn: I will prepare an order for your honor to sign. Thank You, your Honor. 7RP476
(Recess)

After the judge had signed the order and left the bech, appellant due to The prosecutor John Sheeran stating, "you should have dropped your appeal" [this is a ground an was told to the judge that J. Sheeran, was making me either drop my appeal issues, or recieve an exceptional sentence, 34335-5, The judge was long ago aware that this was the reason that appellants sentencing ended up being set out for approx. 4 months because the State had not briefed the exceptional sentence issue, and at every subsequent sentencing hearing told the appellant to waive the right to appeal or recieve an axceptional, This vindictive claim will be before this court in addressing 34335-5] based on his statement appellant was upset, based on the fact of how I was erroneously convicted and had also got an exceptional sentence for not waiving the right to appeal these errors. So appellant will admit I refused to sign the judgment and sentence, If this court will recall I had not signed, one single order since after arraignment though.
So the Judge comes back out on the record;

JS: Back on the record with respect to the two Cory Thomas files.
The defendant is refusing to sign any of the Judgment and Sentences. The only real concern that for the State is the defendant is also refusing to put his fingers--on the finger page. And IF he refuses to do so, now that we're on the record, I'm going to ask that the deputies take his finger and dip them in the ink and put them on the fingerprint page. 7RP476

Cn: Nothing to add your Honor. 7RP476

Ct: Officers can you do it? 7RP476

Corrections Officer: Yes Sir. 7RP476

Ct: Do it.

Appellant then said [and why its not in the record is unclear] they dont have to do it I dont want to get in trouble I'll do it. and I did it on my own, for fear of getting in trouble at

Appellant then said[why its not in the record is unclear] I'll do it, they dont have to, and appellant dipped and inked alone. (The reason I did was because I did not want to be in trouble in the jail, The State can verify I did it alone)

Now where appellant believes the judge became vindictive, is he saw me while I did my own fingers, and said [the stenographer has it as a run on sentence but it was not like that]

Ct: I think I want to cancel the release order, where is it? 7RP476

St: I believe it's with your honor. 7Rp476

Cn: Judge I would ask that you not do that. This is obviously a very angry young man at this point. 7RP476 (while saying this I showed the judge my prints that I did)

Ct: It's done, Sir.
Anything else? 7RP476

St: With that your honor I think I will be able to hand up the J&S. 7RP476
(adjourned)

Appellant does not rely solely on this incident in support if my ground of injudicious conduct but rather relies on all of the comments, including the names, that appellant took offense to. And ask that this ground be viewed in light of all the other errors aforementioned,

ARGUMENT

The Standard for reversal on the basis of Judicial Misconduct during the trial is whether the trial was unfair. Handigards Inc. v Ethicon Inc. 743 F3d 1282,1289 To demonstrate that the trial judge was biased [Hansens] must show that the judges conduct reflected a disposition, based on extra Judicial sources. to treat him unfairly. Sealy Inc. v Easy Living Inc. 743 F3d 1378. Appellant in this case made an appeal but the judge refused to acknowledge it. the Notice to Answer was specifically based on Extra judicial sources. in regards to myself and Thomas v City of Tacoma 410 F3d 644(2005).

denial of an impartial judge can never be harmless. Chianelli v Environmental Protection Agency 8 Fed Appx 971. At the end of the trial although disapointed in the outcome he should leave the Court House feeling that he has been treated fairly, and that his case has been decided by a nuetral and impartial arbiter. Anderson v Shepard 856 F2d 741.

I left the Courthouse knowing that my judge had lied to me about an ex parte contact, had limited and restricted crucial cross examination, I left with Double Jeopardy Convictions in 34335-5, knowing that my Judge had called me names, expressing his opinion about me, recieving an exceptional sentence without a jury, based on misdemeanors litigated in the Federal Lawsuit, in spite of the fact I was not off the scale in points, My only criminal history considered was Juvenile from aproximatley 11 years ago at that time. knowing that he cancelled my funeral, becuase he was upset about me not signing when I had not in the months previous, with him knowing that I dipped my own fingers, took no effect what an attorney who came from seattle had to say about me, didn't even want to let him talk [judge]. He knew the officer of the court of 40 years agreed to take me, again from Seattle not this same day but the next day and that day being a Saturday. I dont think it is necessary to raise all the errors and ground aforementioned,

I left the Courthouse having no sense for what Justice is in America, I've had one subsequent hearing with a Administrative Law Judge, trying to address Child Support debts while incarcerated, Based on Her actions, Judge Emery, and Judge Tollefson I recognize that there is still some Justice out there, but it doesn't tip the balance when dealing with injustice. The basic requirement is one of impartiallity in demeanor as well as in actions. U.S. v Frazier 584 F2d 790,794 . The Supreme Court has held, they recognize the requirement of nuetrality in adjudicative proceedings 'as it' preserves both the appearance and reality of fairness, generating a feeling that justice has been done, by ensuring that no person will be deprived of his interest in the absence of fair proceedings in which he may present his case with he assurance that the arbiter is not predisposed to find against him. Anderson v Shepard 856 F2d 741,746

As for appearance of impartialilty I raise one additional ground since I have that record in regards to this case number.

GROUND 19
EX PARTE COMMUNICATIONS
OVER OBJECTION
ORAL AND WRITTEN MOTION

Appellant Objected to ex parte communications between the State and my Judge not even a whole day past when the State and my Judge had ex parte Communication, the exchange involving me , goes as follows:

Ap: My 2nd objection today would be, its a affidavit in support of mistrial. 7RP4

After telling the court my objection I read the brief Motion into the record;

Ap: Comes now, the defendant and moves this court to grant a mistrial based on the following: The defendant filed a notice to answer and a change of venue to all Pierce County Judges, objecting to any ex parte contact, and demanding a full record thereof if ex parte contact occurred, I am pro se and I object to not being present in the instance of ex parte contact between the prosecutor and the Judge. 7RP4,5

Ct: Which Judge?

Ap: He's told me he has had ex parte contact with this court

JS: I did not say that.

Ap: I asked him if he's had ex parte contact with this court.

Ct: He doesn't have contact with me. PERIOD

Ap: Was there an ex parte order that he **asked you** to sign?

Ct: Material Witness warrant?

Ap: Yes?

Ct: Yes!

Ap: I was wondering, as far as the ex parte contact
Or was there any ex parte contact? I asked that the parties make a record of whatever was said. Nonetheless, I am pro se, representing myself, and I should have been present at my proceeding. [right to be present 34335-5]

And then after clearly denying it the Judge asked me this;

Ct: I'll ask you how does that prejudice you?

Ap: I dont know what the ex parte communications were.

Ct: It was a witness warrant!

Ap: I dont know what representations were made to you or to this court at all. None the less, I should have been present, as a pro se defendant, I'm my own attorney. 7RP4,5

This is when I knew my hearing before this trial judge were going to not have good outcomes and they didn't, when I asked the Court about him he denied it, he said he doesn't have contact with me period. I dislike that the 'record' does not reflect visually and verbally as far as intonation, But it should be clear, I ask the Court to walk a ¼ of a mile in my shoes, and tell me would this be an impartial arbiter for you?

Argument next page.

ARGUMENT(S)

If in the plainest terms ex parte communications are widely disfavored, in this case the judge denied it, and then turns it around as ask's me how does that prejudice me? Whereas the State kind of threw his hands up, as if to say well he knows, then and only then did the judge respond to me, I would have never known had another attorney not called me that night in the jail and told me, I wasn't there to even know to ask the State, Thats what I meant by ½ like me and ½ dont. luckily one of the ½ that does was there and took the liberty to call me and tell me, It was obviously enough for him to let me know and to this day I still dont know exactly what was said...

Ex Parte contacts are a 'dangerous proceedure' when the defendants principal advesary has private access to the ear of the court. Haller v Robbins 409 F2d 857. This is because unchecked, a prosecutor can relate sorid, uncorraberated, and inadmissable information about the defendant that defense counsel[or pro se litigant] has no opportunity to controvert. [parenthesis mine] United States v Alverson 666 F3d 341(9th Cir) Also the fact that the prosecutor 'got in his first pitch' can seriously prejudice a defendants rights. Haller(supra)

Regardless of actual prejudice, ex parte communications ' Shadow the appearance of impartiality of any judicial proceeding. Guleco v Meachum 533 F2d 713.

In this case it not only "shadowed" the appearance of fairness, at first thought, when I first learned of the communication, it affirmed my fear and enforced my thought (that I did not want to acknowledge) when the judge insolently, forthrightly, and outright denied it. And the State directly lookin at me and knowing my uphill battle to get this far, looked as if it behooved him to make some kind of record.

Justice must satisfy the appearance of justice. Offutt v United States 75 S. Ct.11. It is Ethically, Statutorily, and in some cases Constitutionally impermissable for prosecutors to engage in unauthorized ex parte discussions with , or submission of materials, to a judge relating to a particular case which is to come before him. ABA Standards For Criminal Justice §3-2-8(c), ABA Model Code of Judicial Conduct Canon 3(a)(4)m 5th 6th and 14th Amendments--Due Process, Prosecutor Misconduct 13.15 at 533(2005 ed.)

Not only is it a gross breach of the appearance of Justice when the defendants principal advesary is given private access to the ear of the Court. Coupled with the fact that is is a dangerous, unfair, inethical and prejudicial in and of itself,.

However impartial a prosecutor may mean to be, he is an advocate accustomed to stating one side of the case. United States v Wolfson 634 F3d 1217.(9th Cir).

And none of us know what the true contents of that communication were nor the results appellant is still suffering form them.

And to take this one step further, the warrant was issued and the Court without me present, [argued in 34335-4] had a hearing with the witness that was relevant to this witness warrant, and questioned and admonished the witness withtout appellant present.

In a case in which the similar circumstances took place, reagrding the witness, LORD GOODARD; Quahing the Convictions said;

"That is a matter which cannot possibly be justifed... time and time again this court has said that Justice must not only be done, but must manifestly be seen to be done." Rev. V. Bodmin JJ McGrath 71 S.Ct. 649

For the final time appellant maintains DISMISSAL is well warranted. And DISMISSAL is requested in light of this whole record.

USC= UNITED STATES CONSTITUTION WSC = WASHINGTON STATE CONSTITUTION

ERROR(S) RECAP

CONFLICT OF INTEREST X2/USC §5 §6 §14 / WSC §1 §2 §3 §29 §30
UNREPRESENTED AT HRG./USC §6 §14 WSC §1 §2 §3 §29 §30
PRO SE DENIAL/ USC §6 §14 WSC §1 §2 §3 §29 §30
DISCRETIONARY REV. DENIAL/USC §14 WSC §1 §2 §3 §22 §29 §30 (RAP 2005)
STATES UNTIMELY PRO SE ADDRESS
COMPULSORY PROCESS/USC §6 §14 WSC §1 §2 §3 §22 §29 §30
SPEEDY TRIAL/ USC §14 WSC §1 §2 §3 §22 §29 §30 Cr.R. 3.3
DENIAL OF AID/ USC §6 §14 WSC §1 §2 §3 §22 §29 §30
NO COURTROOMS/ USC §6 §14 WSC §1 §2 §3 §29 §30
MIRANDA/ USC §5 §14 WSC §1 §2 §3 §9 §29 §30
INSTRUCTION COMMENTING ON EVIDENCE
INCOMPLETE JURY POLL
RESTITUTION
MISSTATEMENT OF EVIDENCE/ USC §5 §14 WSC §1 §2 §3 §29 §30
INEFFECTIVE ASSISTANCE OF COUNSEL/USC §6 §14 WSC §1 §2 §3 §29 §30
SLEEPING COUNSEL/ USC §6 §14 WSC §1 §2 §3 §29 §30
PREJUDICIAL CLOSING BY COUNSEL/USC §6 §14 WSC §1 §2 §3 §29 §30
COMMUNITY CUSTODY
INJUDICIOUS CONDUCT/ USC §14 WSC §1 §2 §3 §29 §30, Art IV§28 & §31 RPC, CJC, ABA
EX PARTE COMMUNICATION/USC §5 §6 §14 WSC §1 §2 §3 §10 §29 §30 Art IV§28 & §31 RPC CJC, ABA

The primary pupose of this page is to recap the primary errors raised, the specific subsection of the various laws are what appellant believes to be applicable, and did not want to run into a situation of failing to cite a specific violation, in relation to each error asserted.

And all other errors that attached collaterally

ASSIGNMENTS OF ERROR AND ISSUES PERTAINING TO ERRORS

ASSIGNMENT OF ERROR 1 (CONFLICTS OF INTEREST NOT ADDRESSED)

Appellant raised 11 conflcits of interest with [CDPJ] and [CD1] who both failed to conduct any inquiry themselves, in violation of the rights assigned to this error on the error recap page.

ISSUES PERTAINING TO ASSIGNMENT OF ERRORS

Where appellant objects both orally and written to conflicts of interest, is it error for the court to make inquiry? is it error for the court to address the issues several hearings later? is appellant afforded effective assistance of counsel while counsel is operating under conflict?

ASSIGNMENT OF ERROR 2 (UNREPRESENTED AT HEARING)

The court erred when it allowed conflicted counsel to withdraw without a formal appearance have been filed on behalf of appellant, The court also erred in conducting a hearing, which was exstensive without appellant represented. and the court erred in denying pro se when appellant was unrepresented.

ISSUES PERTAINING TO ASSIGNMENT OF ERRORS

Does the court err in allowing conflict counsel to withdraw without a formal notice of appearance having been filed? Does the court err in conducting a hearing in which the appellant is unrepresented? Where issues of Due Process, Pro se right, effective assistance, speedy trial are at issue is this a critical stage of the proceeding entitling the appellant to representation? Does the court err in imprisoning the appellant within his previously invoked right to counsel? is it error where the accused is unrepresented, to not allow the appellant to preserve meritorious appellate issues on the record? Does the court err in failing to grant pro se for an unrepresented defendant?

ASSIGNMENT OF ERROR 3 (PRO SE DENIAL)

The Court erred on various occasions by denying the appellant the right to proceed pro se. The court further erred in fialing to make a record as to the reason for denials at appellants request, consequently the court erred in violating speedy trial for failure to grant pro se and address conflcits in a timely manner.

ISSUES PERTAINING TO ASSIGNMENT OF ERRORS

Where an accused has a constitutional right to proceed pro se absent Breedlove findings, does the court err in denying the right to proceed pro se? does the court err in not making a record at the request of one of the party's as to why the court is denying pro se? If a request to proceed is erroneosly denied does the court also err in granting a State v Campbell continuance? Is a State v Campbell contnuace valid where the accused objects to representation by counsel seeking Campbell continuance?

ASSIGNMENT OF ERROR 4 (DISCRETIONARY REVIEW FORM DENIAL)

The Court erred when it failed to provide a Notice of discretionary review form pursuant to former RAP 5.2 (j) "assistance to the defendant" (2004)

ISSUES PERTAINING TO ASSIGNMENT OF ERROR

Does the Court err in failing to provide a discretionary review form that is requested in open court, when the accused ask for such form and give the provision that allows such a request?

ASSIGNMENT OF ERROR 5 (STATES UNTIMELY ADDRESS OF PRO SE)

The State erred in failing to address pro se right at earlier juncture and the State erred in addressing pro se right only after extraordinary writ is filed on the denial.

ISSUES PERTAINING TO ASSIGNMENT OF ERROR

Does the State err in an untimely address of a right of a defendant, when the timeliness of such right affects other constitutionally related rights? does the State err in addressing the rights of an accused only after the accused request assistance from a higher court to assure that right?

ASSIGNMENT OF ERROR 6 (COMPULSORY PROCESS VIOLATION)

The court erred in failing to provide a pro se, incarcerated defendant with a compulsory process, the court erred in failing to provide that compulsory process over objections, and motion, The court erred in making appellant choose between two constituionally protected rights.

ISSUES PERTAINING TO ASSIGNMENT OF ERROR

Does the court err in failing to provide an incarcerated offender with a compulsory process? Where the accused objects both written or orally is it error to deny that objection to a compulsory process? Does an incarcerated defendant have the right to 'AID' to assist in a compulsory process? Where the accused specifically tells the court he does not want hybrid, but counsel for the limited purpose of a comulsory process is it error to not provide 'AID'?

ASSIGNMENT OF ERROR 7 (SPEEDY TRIAL)

The Court erred in violating appellants right to a speedy trial.

ISSUES PERTAINING TO ASSIGNMENT OF ERROR

Does the court err and violate speed trial right, where the accused repeate--dly demands a speedy trial? Does the court err in applying State v Campbell as the reason for continuance where the accused objects to representation by counsel and asserts on numerous occasions the right to proceed pro se? Where the accused repeatedly obejcts to representation, asserts pro se right, demands speedy trial and puts it all in various maotion formats as well is any subsequent continuance a violation of speedy trial?

ASSIGNMENT OF ERROR 8 (DENIAL OF AID)

The Court erred in failing to provide "AID" as called for by the sixth amendment, the court erred in failing to make that appointment over objection, the court also erred in ordering that appellant could have NO AID for the duration of proceedings,

ISSUES PERTAINING TO ASSIGNMENT OF ERROR

Where an appellant make it abundantly clear he does not want HYBRID repreesentation, does the court err in failing to provide AID? Does the court err in providing AID to an incarceated defendant to assist with a compulsory process? Does the court err in ordering that a defendant can neither have an appointment of AID made or retain AID to help with a compulsory process?

ASSIGNMENT OF ERROR 9 (NO COURTROOMS AVAILABLE)

the Court erred on several occasions for continuing trial based upon unavailability of courtrooms.

ISSUES PERTAINING TO ASSIGNMENT OF ERRORS

Where an accused Objects to lack of courtroom space and moves for Dismissal does the court err in still continuing trial because of no court rooms?
Is it error for the court to make a record as to why other courtrooms are not available? Is courtroom unavailability alone enough to warrant a continuance?

ASSIGNMENT OF ERROR 10 (MIRANDA)

The Court erred in admitting a statment, over objection, that was obtained in the absence of Miranda warnings.

ISSUES PERTAING TO ASSIGNMENT OF ERROR

ISSUES PERTAINING TO ASSIGNMENT OF ERROR

Did the court err in not only allowing a statement to be admitted to the jury, Did the court err in allowing officers to testify to the contents of the statement absent the required Miranda warnigs? Where the record does not reflect that Miranda warning were ever administered, does the court err in allowing that statement to be used as incriminating evidence of guilt?

ASSIGNMENT OF ERROR 11 (INSTRUCTION COMMENTING ON EVIDENCE)

The Court erred when it allowed an instruction to the jury that told the one of the elements of the offense

ISSUES PERTAINING TO ASSIGNMENT OF ERROR

Is it error for an instruction to tell the jury one of the elements of an alleged offense? Does it reduce or negate the States burden of proving every element of an offense charged?

ASSIGNMENT OF ERROR 12 (INCOMPLETE JURY POLL)

The Transcription reflects that Number 3 Juror, has no affirmative answer during the polling of the jury

ISSUE PERTAINING TO ASSIGNMENT ERROR

Is a Jury Poll complete where the record fails to reflect the true verdict of one of the jurors?

ASSIGNMENT OF ERROR 13 (RESTITUTION)

The Court erred in applyng restitution without making the required findings of ability to pay such restitution,And the Court erred in applying the total of States purported restitution to appellant only, when there was a Co-defendant who took a Plea, and there was a significant question as to whether or not appellant was in fact involved at all.

ISSUES PERTAING TO ASSIGNMENT OF ERROR

Does the court err in failing to inquire into the ability of an accused to pay restitution before imposition of restitution? Does the court err in imposing all restitution to only one person, where there was a co-defendant who took a plea

ASSIGNMENT OF ERROR 14 (MISSTATEMENT OF EVIDENCE)

Error occured when the State on various occasions Misstated the evidence, the State also erred in stating facts that were not in evidence nor supported by the record?

ISSUES PERTAINING TO ASSIGNMENT OF ERROR

(See Counsels assignment of error to her noticed misstatements)

ASSIGNMENT OF ERROR 15 (INEFFECTIVE ASSISTANCE OF COUNSEL) 16 and 17 as well

Error occured when the appellant was not afforded effective assistance of counsel that the sixth amendment calls for.

ISSUES PERTAINING TO ASSIGNMENT OF ERROR

Is the appellant afforded effective assistance of counsel when counsel is sleeping during direct examination by an advers witness? Is counsel ineffective for implying guilty in closing argument to the jury? Is counsel ineffective for abandoning his loyalty to his client, Is counsel ineffective where counsel disregards the objectives of the accused? is Counsel ineffective for making statement to sentencing judge advers to his clients interest?

ASSIGNMENT OF ERROR 18 (COMMUNITY CUSTODY)

The Court erred in imposong Community Custody on top of the Standard Range absent a jury verdict to allow a sentence in excess of the Standard Range

ISSUES PERTAINING TO ASSIGNMENT OF ERROR

Is Community Sentence imposed on top of Standard Range In essence a Exceptional Sentence, where should that Community Custody time be imposed the accused would have to serve that addition Community Sentence in custody? Is any sentence in excess of the Standard Range and Exceptional Sentence? Should the Judgment and Sentence reflect the Statutory Maximum and specify that an accused can not be incarceated past that Statutor Maximum?

ASSIGNMENT OF ERROR 19 (INJUDICIOUS CONDUCT)

The Court erred in acting Judiciously, erred in making derogatory personal opinions of the accused, and acted injudiciously in demeanor and acts detailed in gound 19

ISSUES PERTAINING TO ASSIGNMENT OF ERROR

Does the court act injudiciously by calling the defendant "arrogant" comments that he feels the defendant has "a habit of swimming upstream" does the court exhibit injudicious conduct in lying to a defendant? does the court exhibit injudcious conduct where it fails to make inquiry into motions before ruling on them on a whim? does the cout act injudiciously by imposing an exceptional sentence for a first time felony Adult offender, and that exceptional sentence aslo being based primarily on issues that have been previously litigated in a civil court? Does the court act injudiciously by granting a request to go to a funeral and when the defendant refuses to sign an unrelated order, the court terminates the funeral request, Does the court act injudiously by terminating such order based on refusing to sign a documment when the court know that that the defendant has refused to sign any orders in many Months?

ASSIGNMENT OF ERROR 20 (EX PARTE COMMUNICATION OVER OBJECTION)

The Court erred when, over objection, the court allowed an ex parte contact to occur between the State and the Appellant, The Court further erred in lying about the ex parte contact, between the court and prosecution.

ISSUES PERTAINING TO ASSIGNMENT OF ERROR

Is it error for the court to allow ex parte communications over objection? Is it in the appearance of fairness for the Court to lie about such contact? Is the appellant entitled to a fair, nuetral and detached arbited of the facts?

These Assignment of Errors and Isssues pertaining thereto are issues appellant believes are clear issues, but are limited to the issues aforementioned. The issues are discussed in more detail in the brief supplied by appellant.

Now at the top of this mountain,Appellant asserts, in the very unlikely event that this Court does not dismiss, these appeals, Appellant has hereby raised 19 grounds that are all supported by the record, of those 19, there were many collateral errors that had attached to each one, that appellant feels were too numerous and clear enough that their recesitation is not necessary, NOTWITHSTANDING, Two or more individually harmless errors has the potential to prejudice defendant to the same exent as a single reversible error. U.S. v Rivera 900 F2d 1464,1469(en banc) If many of these are considered non reversible errors The cumalative error doctrine mandates reversal when the cumalative effect of non reversible errors materially affects the outcome of the trial. State v Newbern 95 Wn. App 277,297, Appellant is well beyond that threshold, because the total effect of a series of incidents [have created] a trial atmosphere which [has threatened and deprived] the accused of the fundamentals of due process. State v Swenson 62 Wn. 2d 259[parenthesis changes mine]. Cumalative error doctrine applies when several trial errors which standing alone may not be sufficient to justify reversal, but when combined may deny defendant of a fair trial. State v Greiff 141 Wn 2d 900. The Court and County have obtained convictions through continued violations of due process, When a Government action deprives a person of life, liberty, or property without fair proceedings it violates due process. U.S. v Deters 143 F3d 577. our United States Supreme Court has held that a conviction come by illegally is fruit of the poisonous tree, and no State has a right to exploit that illegality. Wong Sun v U.S. 371 US 471. Although each error looked at seperately may not rise to the level of reversible error, their cumalative effect may nevertheless be so prejudicial to appellant that reversal is warranted. U.S v Wallace 848 F2d 1464,1475(9th Cir.)

A Travesty of Justice has occured here in the States venture to punish an individual. The interest of the United States in a criminal prosecution is not that it shall win the case but that Justice will be done. Jencks v U.S. 353 US 657, 77 S. Ct. 1007 . It is just as well that lady Justice is blind, she might not like the things done in this case in her name, if she could see.There is no more cruel tyranny than that which is exercised under cover of law, and the colors of Justice. U.S. v Jannottie 673 F2d 578, 614.

See now I have prepared my case, I know I shall be Vindicated. Job 13.28 NKJV.

REMEDY SOUGHT

DISMISSAL

Respectfully Submitted, On this 23 Day of Mar 2007

x.
CORY LAMONT THOMAS

FURTHER AFFIANT SAYETH NAUGHT.

STATE OF WASHINGTON

COURT OF APPEALS

DIVISION TWO

STATE OF WASHINGTON, APELLEE	No:	34328-2-II
v.	**DECLARATION OF SERVICE BY MAILING**	
CORY LAMONT THOMAS, APPELLANT.		

I, Cory Lamont Thomas, Appellant, in the above entitled cause, do hereby declare that I have served the following documents;

Supplemental brief and Statement of Additional Grounds RAP 10.10

Upon:

PIERCE COUNTY PROSECUTORS OFFICE
930 TACOMA AVENUE SOUTH ROOM 946
TACOMA, WASHINGTON 98402
946 COUNTY CITY BUILDING

(AND)

KATHRYN RUSSELL SELK
1037 NORTHEAST 65TH STREET BOX 135
SEATTLE, WASHINGTON 98115

I deposited with the N -Unit Officer Station, by processing as *Legal Mail*, with first-class postage affixed thereto, at the Airway Heights Correction Center, P.O. Box 1839, Airway Heights, WA 99001-1839.

On this 23RD day of MARCH, 2007.
I certify under the penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Respectfully Submitted,

Petitioner
CORY LAMONT THOMAS, APPELLANT